

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

In the Matter of:)
)
)
PUBLIC HEARING TO DETERMINE)
WHETHER TO ADOPT A DRAFT CEASE)
AND DESIST ORDER AGAINST)
CALIFORNIA AMERICAN WATER.)
)
~~~~~ )

JOE SERNA JR./CalePA BUILDING  
1001 I STREET  
COASTAL HEARING ROOM  
SACRAMENTO, CALIFORNIA

HEARING PHASE 2, VOLUME I  
WEDNESDAY, JULY 23, 2008  
9:00 A.M.

LINDA KAY RIGEL, CSR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 13196

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

CO-HEARING OFFICERS

Mr. Arthur Baggett

Dr. Gary Wolff

STAFF

Mr. Buck Taylor, Staff Counsel

Mr. Ernest Mona, Water Resource Control Engineer

Mr. Paul Murphey, Engineering Geologist

Mr. Buck Taylor, Staff Counsel

PROSECUTION TEAM:

Mr. Reed Sato

Director, Division of Water Rights, Office of  
Enforcement

1001 I Street

Sacramento, CA 95814

CALIFORNIA AMERICAN WATER COMPANY:

Diepenbrock, Harrison

BY: Mr. Jon D. Rubin

Ms. Valerie C. Kincaid

400 Capitol Mall, Suite 1800

Sacramento, CA 95814

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT:

De Lay & Laredo

BY: Mr. David C. Laredo

Ms. Heidi A. Quinn

606 Forest Avenue

Pacific Grove, CA 93950

APPEARANCES continued

CITY OF CARMEL-BY-THE-SEA, CITY OF SEASIDE, SEASIDE  
BASIN WATERMASTER:

Perry & Freeman  
BY: Mr. Donald G. Freeman  
San Carlos at 8th Avenue  
P.O. BOX 805  
Carmel-by-the-Sea, CA 93921

CITY OF SEASIDE and SEASIDE BASIN WATERMASTER:

Brownstein, Hyatt, Farber, Schreck  
BY: Mr. Michael Fife  
21 East Carrillo Street  
Santa Barbara, CA 93101-2706

CITY OF SAND CITY:

Mr. James Heisinger, City Attorney  
Delores and 6th Streets  
P.O. Box 5427  
Carmel, CA 93921

PEBBLE BEACH COMPANY:

Fenton & Keller  
BY: Mr. David C. Sweigert  
2801 Monterey Salinas Highway  
P.O. Box 791  
Monterey, CA 93942

MONTEREY COUNTY HOSPITALITY ASSOCIATION:

Noland, Hamerly, Etienne, Hoss  
BY: Mr. Lloyd W. Lowrey, Jr.  
333 Salinas Street  
Salinas, CA 93901

APPEARANCES continued

PLANNING AND CONSERVATION LEAGUE:

Mr. Jonas Minton  
1107 9th Street, Suite 360  
Sacramento, CA 95814

SIERRA CLUB (VENTANA CHAPTER)

California Environmental Law Project  
BY: Mr. Laurens H. Silver  
P.O. Box 667  
Mill Valley, CA 94942

CARMEL RIVER STEELHEAD ASSOCIATION:

Law Offices of Michael Jackson  
BY: Mr. Michael B. Jackson  
P.O. Box 207  
Quincy, CA 95971

PUBLIC TRUST ALLIANCE:

Mr. Michael Warburton  
Ms. Patricia Nelson  
Resource Renewal Institute  
Room 290, Building D  
Fort Mason Center  
San Francisco, CA 94123

PUBLIC UTILITIES COMMISSION, DIVISION OF RATEPAYER  
ADVOCATES:

Mr. Max Gomberg  
505 Van Ness Avenue, 4th Floor, Room 4101  
San Francisco, CA 94102

NATIONAL MARINE FISHERIES SERVICE:

NOAA Office of General Counsel  
BY: MR. NIEL MOELLER  
501 W. Ocean Boulevard, Suite 4470  
Long Beach, CA 90802

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

ALSO PRESENT

Ms. Joyce Ambrosius, National Marine Fisheries  
Service

Mr. Mark Stretars, State Water Resources Control  
Board

Mr. James Kassel, State Water Resources Control  
Board, Division of Water Rights

Dr. Steven Kasower, University of California, Santa  
Cruz

Mr. Marcin Whitman, California Department of Fish and  
Game

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## 1 P R O C E E D I N G S

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3 CO-HEARING OFFICER BAGGETT: Good morning.  
4 Welcome back to Phase 2 of the hearing of the proposed  
5 cease and desist order against California American  
6 Water for the unauthorized diversion of water from the  
7 Carmel River.

8 During this phase, evidence may be presented  
9 as to what compliance measures and schedules of  
10 compliance should be included in any cease and desist  
11 order issued to Cal Am and how such action may be most  
12 effectively and equitably implemented.

13 I am Art Baggett, a member of the State Board,  
14 with my colleague, Gary Wolff. Also present are staff  
15 assigned to the Hearing Team: Buck Taylor, from the  
16 attorney's office; staff geologist, Paul Murphey; and  
17 staff engineer, Ernie Mona.

18 I would like to invite the appearances by the  
19 parties who are participating in the remedy portion of  
20 this hearing. And those making an appearance, would  
21 you please state your name and address for the court  
22 reporter present; and if you have a card, I'm sure she  
23 would appreciate that also.

24 Cal American Water?

25 MR. RUBIN: Good morning. Jon Rubin for

1 California American Water, 400 Capitol Mall,  
2 Sacramento, California 95814, law firm of Diepenbrock  
3 Harrison.

4 CO-HEARING OFFICER BAGGETT: Thank you.  
5 Prosecution Team?

6 MR. SATO: Good morning, Reed Sato for the  
7 Prosecution Team. We are at 1001 I Street, Sacramento,  
8 California, 95814.

9 CO-HEARING OFFICER BAGGETT: Thank you.  
10 Sierra Club?

11 MR. SILVER: Larry Silver, California  
12 Environmental Law Project, for the Sierra Club. Thank  
13 you.

14 CO-HEARING OFFICER BAGGETT: Your address?

15 MR. SILVER: The address, 208 Richardson  
16 Drive, Mill Valley, California 94941.

17 CO-HEARING OFFICER BAGGETT: Thank you.  
18 California Salmon and Steelhead Association?

19 (No response)

20 CO-HEARING OFFICER BAGGETT: Public Trust  
21 Alliance?

22 MR. WARBURTON: Michael Warburton.

23 CO-HEARING OFFICER BAGGETT: Turn on the mic.

24 MR. WARBURTON: Michael Warburton and --

25 MS. NELSON: Patricia Nelson. 130 Edward

1 Avenue, San Rafael, California 94903.

2 MR. WARBURTON: And the Public Trust Alliance  
3 is a project of the Resource Renewal Institute, and  
4 Building D at Fort Mason Center, San Francisco,  
5 California, 94123.

6 CO-HEARING OFFICER BAGGETT: Thank you.  
7 Carmel River Steelhead Association?

8 MR. JACKSON: Michael Jackson appearing for  
9 the Carmel River Steelhead Association, Post Office  
10 Box 207, Quincy, California 95971.

11 CO-HEARING OFFICER BAGGETT: Thank you.  
12 Planning and Conservation League?

13 MR. MINTON: Jonas Minton for the Planning and  
14 Conservation League, 1107 9th Street, Suite 360,  
15 Sacramento, California, 95814.

16 CO-HEARING OFFICER BAGGETT: Monterey  
17 Peninsula Water Management District?

18 MR. LAREDO: Good morning. David Laredo,  
19 general counsel for the Monterey Peninsula Water  
20 Management District, from the office of DeLay and  
21 Laredo, 606 Forest Avenue, Pacific Grove, California,  
22 93950. And I'll leave my card at the dais.

23 CO-HEARING OFFICER BAGGETT: Thank you.  
24 Pebble Beach Company?

25 MR. SWEIGERT: Good morning. David Sweigert

1 representing Pebble Beach Company. I'm with the law  
2 firm of Fenton & Keller at 2801 Monterey Salinas  
3 Highway in Monterey, California 93940.

4 CO-HEARING OFFICER BAGGETT: Thank you. City  
5 of Seaside?

6 MR. FIFE: Good morning. Michael Fife on  
7 behalf of the City of Seaside and the Seaside Basin  
8 Watermaster. And I provided a card to the reporter  
9 with my address.

10 CO-HEARING OFFICER BAGGETT: Thank you.

11 MR. FREEMAN: Also with the City of Seaside,  
12 Donald Freeman, Perry & Freeman PO Box 805 Carmel,  
13 California 93921. Also appearing for the Watermaster,  
14 also specially appearing for the City of Monterey and  
15 for the City of Carmel. And I will leave a card on the  
16 dais.

17 CO-HEARING OFFICER BAGGETT: Thank you. City  
18 of Sand City?

19 MR. HEISINGER: Good morning. James  
20 Heisinger, city attorney for Sand City PO Box 5427  
21 Carmel, and I'll leave a card on the dais.

22 CO-HEARING OFFICER BAGGETT: Thank you. And  
23 we've got City of Monterey, City of Carmel-by-the-Sea  
24 and Monterey County Hospitality Association?

25 MR. LOWREY: Good morning. Lloyd Lowrey,

1 Noland Hamerly Etienne & Hoss, 333 Salinas Street,  
2 Salinas, California 93902, and I will leave a card at  
3 the dais.

4 CO-HEARING OFFICER BAGGETT: Thank you. I  
5 think that's all the parties. Did we miss anybody?

6 With that, a court is present to prepare a  
7 transcript of the proceedings. Anyone who wants a copy  
8 of the transcript must make separate arrangements with  
9 the court reporter.

10 We had some stipulations as noted at the last  
11 hearing. The Prosecution Team and Cal Am submitted a  
12 stipulation on July 9th pertaining to 21 documents that  
13 were intended to be offered during Phase 1 of the  
14 hearing.

15 For purposes of the record these documents are  
16 identified as State Water Board Exhibits 8 tabs 1-21.  
17 Does anyone have any objection to the admission of the  
18 stipulated documents? If not, they are admitted.

19 (Exhibits SWRCB-8-1-21 were admitted  
20 into evidence.)

21 CO-HEARING OFFICER BAGGETT: Does Cal Am wish  
22 to call Mr. Kassel as a witness today following the  
23 Prosecution Team's case-in-chief?

24 MR. RUBIN: Yes.

25 CO-HEARING OFFICER BAGGETT: Okay. Thank you.

1           MR. RUBIN: We do have some objections we  
2 would like to, general objections, at some point prior  
3 to calling witnesses.

4           CO-HEARING OFFICER BAGGETT: Okay.  
5 Prosecution Team's motion to submit Exhibit PT-46.  
6 Mr. Sato, do you have any comments on that before we  
7 see if there's any objections?

8           MR. SATO: No. It is exactly as we expressed  
9 in our motion. This exhibit was something that was  
10 inadvertently left out of the package presented for  
11 Ms. Ambrosius during the time that we tried to get it  
12 before the submittal of testimony, but Ms. Ambrosius  
13 was on vacation. And so as soon as she returned from  
14 vacation, we expeditiously provided it as quickly as we  
15 could.

16           CO-HEARING OFFICER BAGGETT: Any objections?

17           MR. RUBIN: I do have some objections, with  
18 some general objections I'm going to raise. I could  
19 wait. It's not an objection to the motion per se; it's  
20 to the relevance of the document.

21           CO-HEARING OFFICER BAGGETT: So maybe we could  
22 resolve this. So we -- we'll take the motion to submit  
23 it, but then we'll deal with the relevance issue when  
24 we get to the case-in-chief. Is that sufficient?

25           MR. RUBIN: Yes.

1 CO-HEARING OFFICER BAGGETT: Okay. So we'll  
2 allow the document in, and we'll deal with the  
3 relevancy issue at the appropriate time.

4 Monterey Peninsula Water Management District  
5 duplicate exhibits. It's come to our attention that  
6 Monterey Peninsula Water Management District has filed  
7 two exhibits labeled MPWMD-DF9.

8 The first exhibit was accepted into evidence  
9 June 19th. It's a letter dated August 6, 2007 from  
10 Victoria Whitney. The second exhibit is Darby Feurst's  
11 Phase 2 testimony.

12 Therefore, we proposed to label Phase 2  
13 testimony as MPWMD-DF9A. Are there any objections to  
14 this change? Then that's it.

15 Any other comments, objections, motions, prior  
16 to proceeding today?

17 MR. RUBIN: Good morning, again Jon Rubin for  
18 California American Water. We do want to renew our due  
19 process objections that we raised during the first  
20 phase. Rather than get into those, I would just  
21 incorporate at this point the arguments we previously  
22 presented on due process and our concerns for the  
23 structure of this proceeding and the ability of  
24 California American Water to receive due process.

25 CO-HEARING OFFICER BAGGETT: So noted.

1           MR. RUBIN: The second objection deals with  
2 the issues of res judicata, collateral estoppel, and  
3 the law of the case, those doctrines. I believe that  
4 most of the -- or much of the testimony and exhibits  
5 that have been submitted for the second phase are  
6 precluded by those doctrines.

7           California American Water believes that the  
8 focus of this second phase must be on what effects the  
9 alleged violation of Condition 2 of Order 95-10 are  
10 having particularly on Trust resources.

11           Stated another way, this second phase should  
12 be focused on what are the alleged effects California  
13 American Water's extractions because of changed  
14 circumstances that did not exist at the time Order  
15 95-10 issued are having on Trust resources. Much of  
16 the testimony that's been submitted for this second  
17 phase is not properly tailored to those issues.

18           The Prosecution Team and others seek to  
19 revisit what the State Water Resources Control Board  
20 already decided in Order 95-10. The Prosecution Team  
21 and others do not focus on a remedy that addresses the  
22 alleged effects of the asserted violation of Condition  
23 2. The Prosecution Team and others do not focus on a  
24 remedy that addresses the alleged effects of changed  
25 circumstances.

1           As examples, the Prosecution Team, the Sierra  
2 Club, the Public Trust Alliance, Carmel River Steelhead  
3 Association, California Salmon and Steelhead  
4 Association all present evidence that relates to  
5 pre-1995 data, data that either was submitted to you  
6 during the proceedings that led to Order 95-10 or that  
7 could have been presented at that time.

8           Also, there's quite a bit of evidence that  
9 focuses on the Los Padres Dam operations. I believe  
10 those are outside the scope of this proceeding. The  
11 issue here is extractions by California American Water  
12 from or involving Carmel River water. It doesn't  
13 involve dam operations.

14           And then there is an extensive amount of  
15 post-1995 data that's presented, but it's not tailored  
16 to what effects might be caused by changed  
17 circumstances.

18           That's the extent of my objection.

19           CO-HEARING OFFICER WOLFF: May I ask a  
20 question? The objection -- you phrase the objection in  
21 terms of 95-10 and remedies to failure -- alleged  
22 failure to comply with Condition 2 of 95-10. You  
23 didn't mention Water Code Section 1052.

24           MR. RUBIN: I think that -- I'm sorry.

25           CO-HEARING OFFICER WOLFF: Well, are you

1 claiming that 1052 does not apply?

2 MR. RUBIN: The position of California  
3 American Water that's been presented in prehearing  
4 briefs is that a finding of a violation of 1052 must be  
5 based upon a violation of Condition 2 of Order 95-10.

6 CO-HEARING OFFICER WOLFF: Thank you for the  
7 statement. I didn't want to interpret your prehearing  
8 brief which was actually submitted on procedural issues  
9 before us at that time as representing your full legal  
10 argument in the main matter, and now you've clarified  
11 that. Thank you.

12 CO-HEARING OFFICER BAGGETT: I think we'll  
13 note the objection but continue with the proceeding,  
14 and I'm sure Mr. Rubin will have comments on relevancy  
15 as we get to various parties more specifically tailored  
16 to such an objection.

17 I would like to note though, I think it's  
18 important that I reread the first -- the second  
19 sentence of the first paragraph of our opening  
20 statement.

21 During this phase, evidence may be presented  
22 as to what compliance measures and schedules of  
23 compliance should be included in a cease and desist  
24 order issued to Cal Am, how such actions may be most  
25 effectively implemented.

1           So that is the intent of this hearing; not to  
2 talk so much about the resources, as to how the remedy  
3 is phased. So just for the parties who are presenting  
4 evidence, I mean we've got the written evidence, but in  
5 their questions, that would be most helpful I think for  
6 us up here, to my colleague, Dr. Wolff, and our staff,  
7 in crafting any order.

8           With that, we will now move to the evidentiary  
9 portion of the hearing for presentation of evidence and  
10 cross-examination by parties. We will hear the  
11 parties' cases-in-chief in the following order, which  
12 we talked about last time, Division of Water Rights  
13 Prosecution Team, Planning & Conservation League,  
14 Sierra Club, Carmel River Steelhead Association, Public  
15 Trust Alliance, California Salmon and Steelhead  
16 Association, Monterey Peninsula Water Management  
17 District, Pebble Beach Company, City of Seaside,  
18 Seaside Basin Watermaster, City of Sand City, City of  
19 Monterey, City of Carmel-by-the-Sea, Monterey Peninsula  
20 Hospitality Association, and then California American  
21 Water Company.

22           At the beginning of the case-in-chief, the  
23 representative of the party may make an opening  
24 statement briefly summarizing the objectives of the  
25 case, the major points of the proposed evidence it's

1 intended to establish, and the relationship between the  
2 major points and the key issues. After an opening  
3 statement, we'll hear testimony from the parties' panel  
4 of witnesses.

5           Before testifying, witnesses should identify  
6 their written testimony as their own and affirm that it  
7 is true and correct. Witnesses should summarize the  
8 key points in their testimony and should not read it,  
9 please. We have copies. Direct testimony will be  
10 followed by cross-examination by other parties, Board  
11 staff, myself and my colleague, Board Member Wolff.

12           In order to expedite the hearing, I would like  
13 to impanel witnesses as a panel for cross-examination  
14 also. Redirect testimony may be permitted followed by  
15 recross-examination. Any redirect or recross is  
16 limited to scope of the cross-examination and redirect  
17 testified respectively.

18           We will talk about rebuttal evidence at the  
19 end of -- once we finish the cases-in-chief.

20           Parties are encouraged to be effective in  
21 their cases. Except where I approve a variation, we  
22 will follow the procedures set forth in Board  
23 regulations, the hearing notice, and subsequent  
24 rulings.

25           The parties' presentations are subject to the

1 following limits: Opening statements, 20 minutes for  
2 each party. Oral presentation of direct testimony will  
3 be limited to 20 -- to a maximum of 20 minutes.  
4 Cross-examination is limited to one hour per witness or  
5 panel of witnesses; although, if a showing can be made,  
6 we can be flexible, and additional time may be allowed  
7 for cross. We do not anticipate having oral closing  
8 arguments; but again, we can discuss that at the end of  
9 the proceeding.

10 I will now administer the oath. Will all  
11 those persons wishing to testify please stand and raise  
12 your right hand?

13 (Potential witnesses complying)

14 CO-HEARING OFFICER BAGGETT: Do you promise to  
15 tell the truth in these proceedings?

16 THE WITNESSES (collectively): I do.

17 CO-HEARING OFFICER BAGGETT: Thank you.

18 MR. GOMBERG: Hearing Officer Baggett, Max  
19 Gomberg with the Division of Rate Payer Advocates,  
20 Public Utilities Commission.

21 I just want to clarify, DRA intends to make a  
22 brief opening statement, and I presume that we would be  
23 able to do that after all of the cross-examination of  
24 the parties has finished?

25 CO-HEARING OFFICER BAGGETT: Okay. Well at

1 the end of the proceeding? You did file Notice of  
2 Intent. So Division of Ratepayer Advocates, thank you.

3 CO-HEARING OFFICER WOLFF: How brief is it?

4 MR. GOMBERG: Less than ten minutes.

5 CO-HEARING OFFICER WOLFF: And how long -- do  
6 you intend to be here for three days? I wonder if we  
7 could take his statements today and get him out of  
8 here.

9 (Laughter)

10 CO-HEARING OFFICER WOLFF: It's not my  
11 intention to get you out of here, but you do work for  
12 the public.

13 CO-HEARING OFFICER BAGGETT: Do you intend to  
14 stay for the whole proceeding?

15 MR. GOMBERG: I intended to be here for the  
16 whole proceeding.

17 CO-HEARING OFFICER WOLFF: That's fine.

18 CO-HEARING OFFICER BAGGETT: You intend to be  
19 here. Thank you.

20 With that, we will start with cases-in-chief  
21 Division of Water Rights Prosecution Team, you're up.  
22 Division of Water Rights Division of Water Rights.

23 MR. SATO: Good morning Member Baggett, Member  
24 Wolff, and the Hearing Team. My name is Reed Sato. I  
25 represent the Prosecution Team in this matter.

1           Now from the testimony that's been presented  
2 in the Phase 1 proceedings, it's very clear that  
3 there's been a significant illegal diversion of water  
4 from the Carmel River.

5           In this phase of the proceeding, what we  
6 grapple with is the appropriate remedy, trying to  
7 address both on the one hand the need for resolving Cal  
8 Am's illegal diversions from the Carmel River and on  
9 the other hand recognizing that there are some basic  
10 health and safety needs by the community that is  
11 currently served by Cal Am Water.

12           The remedy proposed by the Prosecution Team is  
13 very straightforward. It's a scheduled reduction in  
14 the total diversions from the Carmel River, using  
15 11,285 acre feet, Cal Am's existing target in Order  
16 95-10, as a baseline for reduction. And we propose a  
17 set of reductions down to ultimately 50 percent or  
18 5,642 acre feet by year 2014.

19           Now as the illegal diverter, Cal Am has the  
20 burden of demonstrating that the remedy proposed by the  
21 Prosecution Team or as adopted by the State Water Board  
22 is unreasonable, arbitrary, and capricious. We believe  
23 that, at least as to the draft cease and desist order  
24 proposed by the Prosecution Team, that showing cannot  
25 be made.

1           The long-term solution to Cal Am's illegal  
2 diversions seems to lie in either the completion of the  
3 Coastal Water Project which people have testified to or  
4 some other permanent solution to the water supply  
5 issues in that region.

6           However, 13 years after Order 95-10 was first  
7 adopted by this Board, we still aren't very close to  
8 knowing exactly what that permanent solution is going  
9 to be. There is still no certainty as to when or if  
10 the Coastal Water Project is going to go forward.  
11 There is still no certainty as to when or if some other  
12 alternative is going to be developed by this community  
13 as an alternative to try to address these serious water  
14 issues.

15           So based upon that uncertainty, the  
16 Prosecution Team recommends firm deadlines for  
17 achieving reductions. We think measurable interim  
18 reductions that -- will occur with a combination of  
19 operating efficiencies, conservation measures, and new  
20 sources of water until a final permanent solution is  
21 developed.

22           Now, Cal Am and many of the designated parties  
23 would have us believe that Cal Am is doing everything  
24 possible to reduce its illegal diversions from the  
25 Carmel River and that as a consequence basically the

1 Board should adopt a status quo -- in other words,  
2 simply go forward with whatever measures were set forth  
3 in 95-10. We don't think that's really appropriate.

4 And they make this claim despite the fact --  
5 they argue that there really should be no additional  
6 hardship placed upon Cal Am or their customers even  
7 though the fact that they have no legal supply of water  
8 to meet their very serious water demand needs.

9 In this regard, Cal Am does what every entity  
10 does who's engaged in illegal conduct. What they want  
11 to do is they want to externalize the costs and the  
12 effects of their illegal conduct someplace else for as  
13 long as possible and as much as possible.

14 In this case, what they want to do is to have  
15 the steelhead of the Carmel River absorb the impacts  
16 for their illegal conduct. We think that's improper.

17 We think it's the shareholders or the  
18 customers of Cal Am who have avoided paying the full  
19 economic and social costs of their water use in a very  
20 water scarce environment.

21 Now, there should be -- as we said before,  
22 it's clear to me that, in the testimony presented so  
23 far in Phase 1, that there are clear violations of the  
24 law, that Cal Am is engaged in illegal diversions of  
25 water from the Carmel River. And so as a result of

1 that, there has to be consequences to Cal Am from those  
2 diversions.

3 If you don't have consequences, you don't have  
4 a water rights regulatory program. You need some  
5 credibility in order to make sure that people, when  
6 they are found in violation of the law, suffer  
7 something so that other people will also comply with  
8 the regulatory scheme imposed by the Water Code.

9 Now, the State Board should impose  
10 consequences on Cal Am for its illegal diversions. The  
11 Prosecution Team recommends that the State Board adopt  
12 the draft CDO prepared by the Prosecution Team. We  
13 think that represents a thoughtful and sensible balance  
14 of the need to get to ending illegal diversions, to  
15 protect the fishery in the Carmel River, and also look  
16 after the basic health and safety needs of the  
17 community in the Monterey Peninsula area.

18 Thank you.

19 CO-HEARING OFFICER BAGGETT: Thank you.

20 JOYCE AMBROSIUS

21 Called by THE PROSECUTION TEAM

22 DIRECT EXAMINATION BY MR. SATO

23 MR. SATO: The Prosecution Team's first  
24 witness will be Joyce Ambrosius.

25 Ms. Ambrosius, could you please state and

1 spell your name for the record.

2 MS. AMBROSIUS: Joyce Ambrosius,  
3 A-m-b-r-o-s-i-u-s.

4 MR. SATO: And have you taken the oath?

5 MS. AMBROSIUS: Yes, I have.

6 MR. SATO: Have you reviewed the written  
7 testimony submitted on your behalf in this proceeding?

8 MS. AMBROSIUS: Yes, I have.

9 MR. SATO: Is the information contained in  
10 that testimony true and accurate?

11 MS. AMBROSIUS: Yes.

12 MR. SATO: Could you please state your current  
13 occupation and place of employment?

14 MS. AMBROSIUS: I work for the NOAA National  
15 Marine Fisheries Service in Santa Rosa, California.

16 CO-HEARING OFFICER BAGGETT: Okay. Mr. Rubin?

17 MR. RUBIN: I do have objections both -- in  
18 regard to the testimony for both witnesses. And I  
19 don't know if you want me to raise those now or after  
20 Mr. Sato summarizes.

21 CO-HEARING OFFICER BAGGETT: We'll hear the  
22 summary.

23 MR. SATO: I'm sorry, the question I asked you  
24 was to please summarize your qualification to  
25 provide -- oh, excuse me -- to please state your

1 current occupation and place of employment.

2 MS. AMBROSIUS: I work for NOAA's National  
3 Marine Fisheries Service. I am a fisheries biologist,  
4 and I'm the team coordinator for the central California  
5 coast.

6 MR. SATO: And NOAA stands for what?

7 MS. AMBROSIUS: National Oceanic and  
8 Atmospheric Administration.

9 MR. SATO: Can you please summarize your  
10 qualification to provide testimony for this proceeding?

11 MS. AMBROSIUS: I have a bachelor's degree in  
12 fisheries from Humboldt State University. I've been  
13 working as a fisheries biologist for 17 years.

14 For the last ten years, I've been working with  
15 National Marine Fisheries Service specifically on the  
16 central California coast and specifically in the Carmel  
17 River.

18 I have been part of the team that determines  
19 the quarterly water budget for the Carmel River and the  
20 flows coming out of the two dams. I'm the team lead  
21 biologist for the San Clemente Dam drawdown project,  
22 the San Clemente Dam renewable project.

23 I worked on the Cal Am and Monterey  
24 Peninsula's ASR water rights proceedings.

25 And I'm the lead biologist for most any

1 project that occurs on the Carmel River that has to do  
2 with water or salmon steelhead.

3 MR. SATO: In your opinion, is there an  
4 adverse impact on the steelhead from Cal Am's  
5 diversions of water from the Carmel River in excess of  
6 3,376 per annum?

7 MS. AMBROSIUS: Yes, I believe there is. The  
8 illegal diversions decrease the amount of juvenile  
9 rearing habitat that is available in the lower river,  
10 and the dewatering causes the need for fish rescues  
11 every year.

12 And from those fish rescues, fish get killed  
13 by being rescued. The ones that aren't rescued die in  
14 the drying pools, that are also subject to increased  
15 predation. There is a lack of food production because  
16 of the dryback, and there is increase in competition on  
17 the --

18 CO-HEARING OFFICER BAGGETT: Mr. Rubin?

19 MR. RUBIN: Yeah, I'm going to have to raise  
20 my objection at this time. I preferred doing it a  
21 little bit earlier. Obviously, if I wait, you're going  
22 to have testimony brought in. I have two objections.

23 One is, again, back to the general objection.  
24 Testimony like what you have just heard relates to  
25 issues that have been considered by the State Water

1 Resources Control Board in the hearings that led up to  
2 Order 95-10.

3 Second objection deals with a specific portion  
4 of Ms. Ambrosius' testimony, I believe on page 5, last  
5 paragraph that extends on to page 6. The first  
6 incomplete paragraph on page 6, deals with the effects  
7 of or alleged effects of the dam. I believe that's  
8 outside the scope of this proceeding.

9 MR. SATO: If I may.

10 I think that Ms. Ambrosius is just giving us  
11 some information about the general environmental  
12 impacts on the steelhead in the Carmel River. And  
13 certainly, some of the things that she's identified  
14 here are pertinent to her discussion about what the  
15 general impacts are as a result of the diversions.

16 So you can't ignore the fact that there are  
17 other things affecting the steelhead that should be  
18 considered. It's a holistic way of addressing the  
19 impacts of Cal Am's diversions.

20 CO-HEARING OFFICER BAGGETT: Can you  
21 specifically address the dam issue raised by Mr. Rubin?  
22 Operation of the dam. How is that relevant?

23 MR. SATO: Well, what we're trying to do is  
24 figure out total impact. So the idea is not  
25 necessarily that we are trying to address a remedy that

1 involves the dam, but certainly the dam as an impact on  
2 the entire fishery.

3           And if you wanted to try to consider a remedy  
4 without considering the entire environment of the  
5 Carmel River, it seems to me it would be inappropriate  
6 for this Board to do so. It would have its hands tied  
7 behind its back in terms of trying to figure out the  
8 entire issue.

9           MR. RUBIN: Mr. Baggett, if I may respond  
10 briefly.

11           This kind of brings us back to, what was it,  
12 April or so of this year when we had the prehearing  
13 conference. A concern that we raised is the exact  
14 issue that Mr. Sato is raising now, that the notice for  
15 this hearing is not a revisitation of Order 95-10.

16           The complaints that were issued that led to  
17 Order 95-10 raised the issue of what effect is  
18 California American Water's diversions having on  
19 steelhead in the Carmel River Basin. And that can't be  
20 the issue. You decided that it is not the issue here.

21           I don't think Mr. Sato responded directly to  
22 the objection on the testimony dealing with San  
23 Clemente Dam, but obviously the issue that, no matter  
24 how you want to read your orders, the issue that the  
25 Hearing Officers have defined has to deal with

1 extractions by California American Water of Carmel  
2 River water and not operation of dams.

3 CO-HEARING OFFICER BAGGETT: Mr. Jackson?

4 MR. JACKSON: Yes.

5 This objection is -- should be overruled  
6 because obviously the infrastructure that Cal Am has  
7 built over the years on the river is going to control  
8 what the solutions can be. If we don't understand that  
9 infrastructure and its effect on the river, there's  
10 really very little way that these problems can be  
11 fixed.

12 It would be like trying to consider the  
13 effects of the Central Valley Project looking only at  
14 the pumps without looking at flows from upstream,  
15 without looking at dams owned by the project upstream.

16 If we're going to recover this river in a way  
17 that doesn't simply tell them not to steal water, we're  
18 going to have to do it with taking the river as it  
19 exists today.

20 None of this information was present in 95-10.  
21 I was there, and NMFS didn't testify. And it's -- so  
22 it's important the effect that these dams, the flows  
23 they control, the access they control, are addressed or  
24 we can't find the solution.

25 CO-HEARING OFFICER BAGGETT: Mr. Silver, and

1 we'll get back to Mr. Jackson.

2 MR. SILVER: Sierra Club believes that there  
3 are very broad remedial powers that the Board has to  
4 curtail the illegal diversions pursuant to the Water  
5 Code provisions in 1052.

6 Sierra Club witnesses and this witness -- I  
7 believe Sierra Club witnesses have proposed some  
8 modifications with regard to what the Board's  
9 prosecution staff is proposing. And one of those  
10 measures does have to do with remediation, particularly  
11 as to Los Padres Dam.

12 And it seems to us that this cease and desist  
13 order as proposed could be modified in such a measure  
14 as to, coupled with reduction in diversions, also  
15 consider the fish passage facilities which are damaging  
16 the steelhead.

17 In that connection also, I believe it's  
18 certainly appropriate, also in light of the  
19 representations that we need to deal at this hearing  
20 with changed circumstances.

21 There is one very significant changed  
22 circumstance that this witness is going to testify  
23 about, and that is that subsequent to Order 95-10 the  
24 south-central coast California steelhead became  
25 designated as threatened -- as a threatened ESU. Later

1 there was a designation as a distinct population  
2 segment, and a critical habitat has been established.

3 That establishes a different regulatory  
4 environment which Sierra Club believes is pertinent for  
5 this club -- for this Board to consider in light of the  
6 cease and desist order.

7 CO-HEARING OFFICER BAGGETT: Okay.

8 Mr. Warburton?

9 MR. WARBURTON: We're rising here partly due  
10 to the fact that Sierra Club and Salmon Steelhead  
11 Association were parties to the order. The public  
12 exists in this case independent of those two parties,  
13 and I think it's very important.

14 The only reason I'm rising now is that the  
15 public is ill-represented if this kind of objection  
16 passes. There is a continuing duty of supervision  
17 under the Public Trust Doctrine, and even decisions  
18 which have been made on allocation can be revisited.  
19 And in this case, there is evidence on all sides, even  
20 without that, but I'm here to bring that up if the  
21 Board thinks that it might be relevant.

22 MR. RUBIN: Just a couple quick last points,  
23 if you don't mind.

24 This hearing is not about the authority that  
25 the State Water Resources Control Board has. I think

1 there is very little dispute about the broad nature of  
2 all the different powers. The question here is as  
3 defined by the notice and rulings from this hearing  
4 officer.

5 Two other points. One, there are licenses  
6 that deal with operation of the facilities, the dams.  
7 Those have not been brought in through any of the  
8 activities of the Hearing Officers, the State Water  
9 Resources Control Board Division of Water Rights.

10 And lastly, you go down this path of extending  
11 this hearing beyond the extraction issue, and there is  
12 no end. There is a lot of factors, I would imagine,  
13 you could hear through testimony that are affecting  
14 Carmel River steelhead: Ocean conditions, recreational  
15 fishing, development with the Carmel Basin, wells by  
16 non-California American Water diversions.

17 And so are what they proposing that you're  
18 going to issue an order that extends beyond California  
19 American Water's extractions to address all of those  
20 other factors? It leads to a bizarre result that I  
21 imagine is unlawful.

22 And so again, I think what we do need to do is  
23 keep focused, and focused under the constraints of  
24 Order 95-10 which was issued by this Board, which was  
25 litigated by a lot of the people in this room, was

1 settled with prejudice. And to come now and try to  
2 reopen that either undermines your order itself or  
3 violates the settlement that the parties as well as the  
4 Board entered into as a result of the litigation.

5 CO-HEARING OFFICER WOLFF: Let me ask you  
6 something about that Mr. Rubin because I hear  
7 legitimate concerns kind of mixed in with some things  
8 which I can't quite sort out as legitimate.

9 Let's just assume for the next three days plus  
10 the days in August that your client failed to  
11 diligently work under Condition 2. I have made no  
12 judgment in that regard; but just for simplifying the  
13 conversation, let's assume that's the case.

14 Why then is it not reasonable to discuss all  
15 sorts of possible remedies as a replacement for a  
16 remedy which hasn't been fully implemented?

17 I understand your concern that the evidentiary  
18 record about the condition of the river prior to 1995  
19 shouldn't be reopened. I do understand that.

20 I'm going to allow some information under  
21 the -- testimony under the liability hearing under  
22 Mr. Jackson's legal theory that diligence is a flexible  
23 term and that, you know, this information is relevant  
24 and diligence has to be weighed. He's going to have to  
25 sustain that legal argument in his brief. So we did

1 allow some of that then.

2 But now in the remedy phase, I concur nothing  
3 more should be brought in with respect to condition of  
4 the river. What we should be talking about is possible  
5 remedies going forward. And why do you object to  
6 discussion of possible remedies going forward, a full  
7 range of possible remedies?

8 MR. RUBIN: I think it does need to be  
9 tailored to the alleged violation, assuming for the  
10 purpose of this hypothetical that California American  
11 Water's not been diligent.

12 Clearly in 95-10, from again our perspective,  
13 California American Water's perspective, the State  
14 Water Resources Control Board contemplated California  
15 American Water diverting more than under its water  
16 rights for a period of time.

17 And so now you are asking yourself: How long  
18 did the Board contemplate? And if you have a decision  
19 that they haven't been -- that California American  
20 Water has not been diligent, what's the effect of the  
21 lack of diligence on fish?

22 Again, it's looking at -- and again, these are  
23 extremely speculative for me to state -- but if the  
24 State Water Resources Control Board contemplated under  
25 Order 95-10, although not stated explicitly, that

1 California American Water would have an alternative  
2 water supply within ten years; and because they haven't  
3 done that, 13 years later, there's three years of  
4 diversions that were not contemplated: What's the  
5 effect of those three years on the steelhead is the  
6 appropriately tailored question.

7 Because in 95-10 --

8 CO-HEARING OFFICER WOLFF: I understand that.  
9 I understand.

10 MR. RUBIN: -- there's --

11 CO-HEARING OFFICER WOLFF: I don't want to  
12 have an argument with you. I understand you believe  
13 that the remedy should be tailored to the violation;  
14 but since we haven't made a determination of the  
15 violation yet, to hear evidence on the range of remedy  
16 simply gives us the information we'll need at a later  
17 time to do that balancing that you're suggesting we do.  
18 Doesn't it?

19 MR. RUBIN: That may be your position. I am  
20 objecting because I don't believe that's the  
21 appropriate position given the legal interpretations  
22 that I've made.

23 CO-HEARING OFFICER WOLFF: Well, what is it  
24 you are specifically asking? Are you asking there be  
25 no discussion of remedies with respect to the fishery

1 other than flow reductions? I'm not quite clear what  
2 it is you're asking.

3 MR. RUBIN: I think that any discussion about  
4 appropriate remedies in this circumstance should be  
5 narrowly tailored to discussion of what impact, if any,  
6 is caused by California American Water's extraction of  
7 water beyond what might be thought as had under the due  
8 diligence in Condition 2 of Order 95-10.

9 Again, what I'm trying to get at is: Under  
10 Order 95-10, the State Water Resources Control Board  
11 contemplated California American Water diverting more  
12 than its water rights for a period of time, set up  
13 mitigation measures, made findings about the effect  
14 that would have on public health and safety, and there  
15 is no clear time table for the diligence.

16 If you're going to make a finding that the  
17 company's not diligent, what we're looking for is  
18 what's the effect from whenever that diligence stopped  
19 to today, what effect that is having on the fish.

20 CO-HEARING OFFICER WOLFF: Excuse me a moment.

21 CO-HEARING OFFICER BAGGETT: We're off the  
22 record a minute.

23 (Discussion off the record)

24 CO-HEARING OFFICER BAGGETT: Okay, ready?

25 Before we go, Mr. Sato, you had an announcement.

1           MR. SATO: I just wanted to introduce Niel  
2 Moeller. He is with the federal government, and he is  
3 with NFMS or NOAA, one of the two agencies, and he is  
4 counsel to Ms. Ambrosius.

5           MR. MOELLER: Good morning. I'm substituting  
6 today for --

7           CO-HEARING OFFICER BAGGETT: You can speak  
8 into the mic and sit down.

9           MR. MOELLER: I am substituting today for  
10 Christopher Keifer who is counsel of record for  
11 National Marine Fisheries.

12          CO-HEARING OFFICER WOLFF: Speak into your  
13 microphone please.

14          MR. MOELLER: Yes. I'm substituting today for  
15 Christopher Keifer who is the counsel of record for  
16 National Marine Fisheries.

17          CO-HEARING OFFICER BAGGETT: Thank you.

18          With that, on the noted objections and  
19 comments, a couple things right off. This is not  
20 reopening 95-10, and we'll not do that to this  
21 testimony. I think we made it clear in the hearing  
22 notice, while we understand Public Trust concerns, we  
23 did not notice that. We did not reopen the entire  
24 water right proceeding.

25          This is a very narrowly focused hearing, I

1 think as Mr. Rubin noted, dealing with the overdraft in  
2 the current operations by Cal Am on the river.

3 We are not going to reopen the operation of  
4 the Los Padres Dam. That is not noticed. That is not  
5 part of this hearing as noticed. That's not even in  
6 the record at this point, the water rights dealing with  
7 that issue.

8 That being said, we would allow testimony as  
9 it relates to the current operations because it's  
10 useful, I think, for my colleague, Dr. Wolff, myself,  
11 and the Hearing Team to understand how the project's  
12 currently functioning and to the extent that the dam's  
13 involved. But again, it's not part of the remedy  
14 phase, but I think it's useful for us to understand  
15 operation of the system. So we'll take the testimony  
16 as that limited -- for that limited purpose only.

17 Secondly, what we would like parties to focus  
18 on is remedies associated with the overdraft which  
19 would include direct effects of that overdraft on  
20 fisheries. But again, not operation of dam. We aren't  
21 reopening that, not going to be reoperating that dam.

22 But if you've got direct testimony from NOAA  
23 or NMFS that states how overdrafting is affecting a  
24 particular pool because the pump's near that pool,  
25 that's relevant. And that's helpful to us because

1 there might be operational changes to affect the  
2 fisheries as opposed to giving them water and we don't  
3 know that. So that's helpful for us to know how the  
4 operation of current projects affects the fishery.

5 But it's limited to Cal Am's diversions  
6 because we realize there's riparian owners, there's  
7 other people way outside this hearing in the basin,  
8 there's other wells that aren't controlled by Cal Am,  
9 and that's not the purpose of this proceeding. Does  
10 that make sense to the parties? With that, let's  
11 proceed.

12 MR. SATO: Yes, and I think the testimony  
13 that -- I wasn't exactly sure whether Mr. Rubin's  
14 objection was to the specific testimony that was before  
15 you by this particular witness, but I think that in the  
16 context of what Hearing Officer Baggett just mentioned,  
17 I think that the testimony that's been presented thus  
18 far is well within the ambit of what you just  
19 indicated.

20 The problem for us of course is that we were  
21 right in the middle of what she was summarizing, and so  
22 I think what I'm going to do is re-ask the question.

23 CO-HEARING OFFICER BAGGETT: That's fine.  
24 Let's get to Mr. Rubin. I think it's important we  
25 resolve this now because it's not just on one party.

1 There's about six parties, seven parties here that have  
2 very similar testimony on both sides of the issue.

3 And I think it might expedite the rest of this  
4 hearing if we can resolve this now. I thought we just  
5 did, but Mr. Rubin?

6 MR. RUBIN: I understand the ruling that the  
7 Hearing Officers just made. My question gets to what  
8 you were just referencing.

9 There's a lot of written testimony and  
10 exhibits that have been submitted that I believe is  
11 outside of the ruling that's been articulated. So the  
12 question I have is in terms of making sure the record  
13 is clear: What do we do?

14 As an example, there's -- I think the Sierra  
15 Club has a lot of testimony that talks about the  
16 effects -- excuse me -- the alleged effects that the  
17 dams are having on fish. There's a bit of testimony in  
18 Ms. Ambrosius' written testimony that gets to not  
19 operational issues but impacts. And obviously, if  
20 those are outside of the scope, they shouldn't be part  
21 of the record.

22 CO-HEARING OFFICER BAGGETT: I think at this  
23 point, short of going through reams of paper here and  
24 extracting paragraphs, I think I'll just restate: It's  
25 useful to the Hearing Officers and the Hearing Team to

1 understand, and we will -- I guess -- we will use this  
2 background information, the evidence in -- presented  
3 before this Board to the scope and limits I just  
4 noticed.

5 We will not be using operation of the dam as  
6 part of the order, but it's useful to understand how  
7 that functions.

8 Otherwise, we're going to be here for two days  
9 just going through striking lines out of evidence. I  
10 don't think that is useful. This is an administrative  
11 law proceeding. This isn't a court of -- formal court  
12 of law. We have that breadth, I think, within the  
13 scope of our rules, and we will use the evidence  
14 accordingly.

15 MR. JACKSON: In order to avoid repetitive  
16 objections, as we interpret it, there is a tremendous  
17 amount of information on the other side of this case  
18 that has to do with impacts that -- on the economy,  
19 impacts on seaside wells, impacts on the -- as I  
20 understand it, we are to come up with no options for  
21 the people of Monterey other than shutting down their  
22 pumping.

23 CO-HEARING OFFICER BAGGETT: That's not what  
24 we just stated.

25 MR. JACKSON: Well, what --

1 CO-HEARING OFFICER BAGGETT: You heard what I  
2 stated. We want to understand: Are there remedies  
3 directly associated with the diversions of Cal Am on  
4 the fishery. If it's a pool next to a pump, that's  
5 relevant. And give us some ideas on how to alter that.  
6 It's not --

7 MR. JACKSON: But the seaside well fields,  
8 other options for water supply, are not relevant in  
9 regard to the effects of the pumping on the fish. So I  
10 mean, how does all that testimony then under this  
11 ruling come in?

12 CO-HEARING OFFICER BAGGETT: Mr. Rubin?

13 MR. RUBIN: I think there's a number of  
14 reasons why this testimony on the Seaside Basin as well  
15 as impacts to the community are important to be  
16 presented.

17 I think they fall to some degree within the  
18 parameters that you articulated for dam operation. I  
19 think it's very useful for you to understand the  
20 potential implications for an order here on the Seaside  
21 Basin itself and on the people of the Monterey  
22 Peninsula.

23 I also believe it's relevant based upon the  
24 proposed remedy that is in the draft cease and desist  
25 order that includes a provision dealing with potential

1 impacts on the public health and safety.

2 CO-HEARING OFFICER BAGGETT: Okay, fine. And  
3 we can deal with the objections to those specific items  
4 when it comes up.

5 But I should just go back to the opening  
6 statement where we noted that how such an action may be  
7 most effectively and equitably implemented. Equitable  
8 is a big word, as I think Mr. Jackson understands, and  
9 we have to understand the economic context and effects  
10 on public health and safety and all other issues, so.

11 MR. JACKSON: I was just going to add it's a  
12 big word the other way.

13 CO-HEARING OFFICER BAGGETT: I --

14 MR. JACKSON: How it most effectively could be  
15 exercised includes the operation of the obstructions  
16 they have --

17 CO-HEARING OFFICER BAGGETT: I think we've  
18 stated that. But the project itself, the dam, is not  
19 part of it. So let's proceed. I think it's clear.  
20 Let's move on.

21 CO-HEARING OFFICER WOLFF: Well, let me assist  
22 Mr. Jackson because he's struggling to understand the  
23 ruling.

24 As I understand the ruling, any action which  
25 is a remedy for the overdraft will be permissible to be

1 discussed, any potential remedy for the overdraft can  
2 be discussed. That's it.

3 MR. JACKSON: Well, I'm --

4 CO-HEARING OFFICER WOLFF: If there is  
5 something associated with the dam which is a remedy for  
6 overdraft, it can be discussed.

7 MR. JACKSON: Like a fish ladder on Los Padres  
8 which would get the fish to a place where they could  
9 take care of themselves.

10 CO-HEARING OFFICER WOLFF: Isn't there a  
11 remedy for overdraft for something that is merely a --

12 MR. JACKSON: It would --

13 CO-HEARING OFFICER WOLFF: -- for a fishery?

14 MR. JACKSON: It would --

15 CO-HEARING OFFICER WOLFF: How does that  
16 relate to overdraft?

17 MR. JACKSON: It would certainly make it less  
18 important to shut it, the overdraft, completely off if  
19 the fish could get to where they could take care of  
20 themselves over Cal Am's obstruction.

21 CO-HEARING OFFICER BAGGETT: Mr. Rubin?

22 MR. RUBIN: Again, this gets back to part of  
23 my initial objection.

24 This is a very slippery slope that we would  
25 head down as a potential remedy to an alleged impact

1 caused by the overdraft could be a ceasing of  
2 Mr. Jackson's client's members from recreating, doing  
3 recreational fishing that has an impact on fish as  
4 well.

5 Another potential resolution for any alleged  
6 impact to steelhead could be an effect on ocean  
7 conditions, climate change, wells that are put in place  
8 by other people.

9 Again, it's a very slippery slope that brings  
10 us into in an area I don't want to go in, and I'm  
11 hoping that you don't either.

12 CO-HEARING OFFICER BAGGETT: No. Let me  
13 restate.

14 CO-HEARING OFFICER WOLFF: Well, let me finish  
15 my distinction -- perhaps we are in agreement -- before  
16 you restate. If there's a disagreement, we may need to  
17 step out; this is a difficulty with co-Hearing  
18 Officers.

19 But my understanding was that in terms of  
20 ordering a remedy, we wouldn't even consider ordering a  
21 remedy associated with the dam because that's a  
22 separate water right that wasn't noticed.

23 But in terms of discussion, in terms of what  
24 is permissible for people to discuss, potential  
25 remedies related to overdraft, I thought that was

1 included.

2 CO-HEARING OFFICER BAGGETT: So did I. But  
3 fish ladders, that's way beyond the scope of this  
4 proceeding.

5 CO-HEARING OFFICER WOLFF: Well, if  
6 Mr. Jackson can clarify how that directly responds to  
7 overdraft when he gets to it, then it would be  
8 permissible. This is the difficulty; it gets down to  
9 the specifics of each one.

10 CO-HEARING OFFICER BAGGETT: It's going to be  
11 a long three days.

12 (Laughter)

13 CO-HEARING OFFICER BAGGETT: I mean that's  
14 what's most -- if we're going to be doing this on every  
15 single witness, on every single paragraph -- I think  
16 it's very clear in this notice of this hearing, it was  
17 not operation of the dam. I said we would take that  
18 information in the limited context of understanding the  
19 operation of the system which I think is useful.

20 CO-HEARING OFFICER WOLFF: And --

21 CO-HEARING OFFICER BAGGETT: But specific  
22 operational changes, we'll be here for weeks. We would  
23 be literally reopening the water right order we did not  
24 notice to reopen.

25 This is a very narrow issue of the cease and

1 desist. If this Board wanted to take up 95-10 on its  
2 own motion, I think we clearly have that authority, and  
3 the Board could have been petitioned to do that. But  
4 that petition was not forthcoming.

5           What was petitioned was the cease and desist  
6 disorder by the Prosecution Team on the operation of  
7 the current systems of operation of the diversions of  
8 Cal Am. Not riparians, not other pumpers, which there  
9 are many.

10           CO-HEARING OFFICER WOLFF: And I don't  
11 disagree with you. I don't disagree with you at all.  
12 The difficulty seems to lie in how broadly we allow  
13 possible potential remedies to be discussed.

14           And Mr. Rubin raises an interesting point.  
15 We're obviously not going to discuss, you know,  
16 controlling carbon emissions including climate change  
17 and et cetera.

18           So it has to do with how narrowly we draw the  
19 boundary around potential remedies and even attempting  
20 to phrase that in terms of direct impacts of pumping,  
21 even that I'm not quite clear what, you know, how we'll  
22 use that as we move forward.

23           Perhaps we can use that as an operational  
24 ruling and move forward and deal with objections along  
25 the way.

1           MR. RUBIN:  If I may, at least from California  
2 American Water's perspective.

3           A major concern arises when you speak of using  
4 information in the context of remedy.  I'm comfortable  
5 with the ruling discussing and providing information  
6 that might help the Hearing Officers of the State Water  
7 Resources Control Board for context, either background  
8 context or to better understand the effect that  
9 extractions by California American Water might be  
10 having on steelhead in relation to other factors that  
11 could be affecting steelhead.

12           Again, the concern arises when you are seeking  
13 testimony particularly that's focused on remedy and  
14 looking at a remedy that is not tailored to the issues  
15 that have been identified in the draft cease and desist  
16 disorder, the notice for this proceeding, and the  
17 rulings by the Hearing Officers.

18           CO-HEARING OFFICER WOLFF:  Let me just clarify  
19 my remarks.  Since any remedy involving the dam would  
20 involve reopening water rights that hasn't been  
21 noticed, we'll exclude any remedy associated with the  
22 operations of the dam.

23           Any remedies have to be associated with the  
24 pumping operations that were noticed.  The remedies  
25 have to be within the reasonable range of things that a

1 normal water rights holder with license to pumping  
2 would do.

3 That excludes, you know, solve the climate  
4 change crisis, et cetera. Is that?

5 CO-HEARING OFFICER BAGGETT: Okay. Let's -- I  
6 concur. Let's proceed. I think we beat this one  
7 enough. Continue. Restart, rephrase your question.

8 MR. SATO: I think where I was in questioning  
9 to Ms. Ambrosius is: Is there an adverse impact to the  
10 steelhead from Cal Am's diversions of water from the  
11 Carmel River in excess of 3,376 acre feet per annum?

12 MS. AMBROSIUS: Yes, and I said there was.  
13 There's a -- from the illegal diversions, it decreases  
14 the amount of juvenile habitat for steelhead in the  
15 river. And it causes the fish rescues to occur every  
16 year. And of those fish that don't get rescued, they  
17 die in the river that dries up.

18 There's also an increase in predation. There  
19 is an increase in competition for food in the area that  
20 does stay wetted. And there's also impacts to the  
21 lagoon.

22 MR. SATO: And is there an adverse impact to  
23 the riparian corridor along the Carmel River from Cal  
24 Am's diversions of water from the Carmel River in  
25 excess of 3,376 acre feet per annum?

1           MS. AMBROSIUS: Yes, there is. Because of the  
2 illegal diversions, the riparian vegetation has died  
3 off, and this has caused bank erosion. And to fix the  
4 bank erosion, the different landowners along the river  
5 have hardened the banks with riprap and other material  
6 that decreases the amount of riparian vegetation  
7 allowed to grow on the bank.

8           The erosion also increases sedimentation into  
9 the river which impacts the fish, and there is the  
10 decrease in the availability of large woody debris to  
11 the river.

12          MR. SATO: What is the current status of the  
13 steelhead and its habitat in the Carmel River?

14          MS. AMBROSIUS: The steelhead was listed as  
15 threatened in 1997, and that is -- that means they are  
16 at risk of becoming endangered in the foreseeable  
17 future. And the Carmel River was designated as  
18 critical habitat in 2005.

19          MR. SATO: Can you tell me what NMFS' position  
20 is with regard to the proposed cease and desist  
21 disorder at issue in this proceeding?

22          MS. AMBROSIUS: We basically support the cease  
23 and desist order. We do recommend that it be adjusted  
24 so that the reductions are happening during the season  
25 that the fish need the water the most, basically during

1 the spring and the summer months, April through October.

2 And what we recommend is that the amount of  
3 reduction that would occur every year, that same amount  
4 be reduced, the annual daily diversion be reduced  
5 during the months of April through October, and then  
6 the rest of the amount could be reduced during the rest  
7 of the year.

8 MR. SATO: I have no further questions for  
9 this witness.

10 CO-HEARING OFFICER BAGGETT: Thank you.

11 MR. SATO: Our next witness for the  
12 Prosecution Team is Mark Stretars.

13 MARK STRETARS

14 Called by THE Prosecution Team

15 DIRECT EXAMINATION BY MR. SATO

16 MR. SATO: Can you please state and spell your  
17 name for the record?

18 MR. STRETARS: My name is Mark, M-a-r-k,  
19 Stretars, S-t-r-e-t-a-r-s.

20 CO-HEARING OFFICER BAGGETT: Mr. Rubin.

21 MR. RUBIN: We have two objections regarding  
22 the written testimony that's been submitted by Mr. Mark  
23 Stretars. I believe it's been marked as Exhibit  
24 Prosecution Team 49. The two objections specifically  
25 relate to testimony that's been provided on pages 1

1 through 3, carries over to the top of page 3.

2           The testimony on pages 1 through 3 apparently  
3 addresses the issue that was discussed during Phase 1,  
4 as far as I could tell, and the question is presented:  
5 Is California American Water diverting unauthorized  
6 water from the Carmel River? That's an allegation that  
7 was addressed during Phase 1.

8           The second objection deals with the testimony  
9 that's been provided on pages 3 through 6. The  
10 testimony is an expression by Mr. Stretars of whether  
11 the remedy that's being proposed by the Prosecution  
12 Team is -- I believe it's characterized as reasonable.  
13 And the objection goes to the testimony being outside  
14 the scope of Mr. Stretars' expertise, and I believe it  
15 is also outside of the scope of his personal knowledge.

16           CO-HEARING OFFICER BAGGETT: Mr. Sato?

17           MR. SATO: I think that that's kind of a broad  
18 objection to be making here, and I think that if  
19 Mr. Rubin wants to test Mr. Stretars' knowledge about  
20 specific issues during his cross-examination, that's  
21 the appropriate time to deal with his objection.

22           MR. RUBIN: Again, this is -- the way this  
23 proceeding's structured, Mr. Stretars' testimony has  
24 been submitted, and his statement of qualifications has  
25 been submitted. There is nothing in it either that

1 suggests Mr. Stretars is qualified as either an expert  
2 or that he has the personal knowledge to testify as he  
3 has on pages 3 through 6.

4 CO-HEARING OFFICER BAGGETT: Let's deal with  
5 pages 1 through 3 first, the Phase 1 issue. Do you  
6 have any comments?

7 MR. SATO: I just --

8 CO-HEARING OFFICER BAGGETT: -- on pages 1  
9 through 3?

10 MR. SATO: On the issue about whether Cal Am  
11 is diverting unauthorized water from the Carmel River,  
12 I think this is simply a repetition of the testimony he  
13 previously gave in Phase 1.

14 CO-HEARING OFFICER BAGGETT: Let's -- we'll  
15 allow that in. I don't -- it doesn't prejudice one way  
16 or the other.

17 Let's deal with the next one. Issue of 6  
18 through 9?

19 MR. RUBIN: 3 through 6.

20 CO-HEARING OFFICER BAGGETT: Excuse me, 3  
21 through 6.

22 MR. RUBIN: 3 through 6.

23 CO-HEARING OFFICER BAGGETT: The question of  
24 personal knowledge or professional expertise.

25 I think that is -- let's deal with it now;

1 otherwise, it will be -- we will all have heard the  
2 summary of the testimony, and then we'll have to go  
3 back on cross and move to strike all that, and the  
4 reporter will have a challenging time going back hours  
5 earlier.

6 MR. SATO: Well, so I'm not exactly sure what  
7 it is Mr. Rubin is objecting to. I mean Mr. -- with  
8 regard to the issue about has Cal Am's diversions and  
9 use of water from the Carmel River been reduced in  
10 accordance with the intent of Order 95-10, Mr. Stretars  
11 talks about a review of Cal Am's fourth quarter  
12 records. I don't know why that's not within the scope  
13 of his personal knowledge. I guess I'm not exactly  
14 sure what Mr. Rubin is objecting to there.

15 CO-HEARING OFFICER BAGGETT: Could you be more  
16 specific?

17 MR. RUBIN: Sure. As I understand the  
18 testimony provided on pages 3 through 6, it's intended  
19 to support a single conclusion, and the conclusion is a  
20 35 percent and 50 percent reduction in the amount of  
21 water California American Water is -- from the level  
22 California American Water is currently extracting can  
23 be done without jeopardizing the public health and  
24 safety.

25 And I don't believe Mr. Stretars has the

1 expertise to draw that conclusion, nor do I believe he  
2 has the personal knowledge to testify even if this  
3 Board -- excuse me -- if even the Hearing Officers were  
4 to allow him to testify as a layperson.

5 MR. SATO: It seems to me that the objections  
6 that Mr. Rubin are now raising kind of go to the weight  
7 of the testimony -- that you want to give to whatever  
8 information is provided by Mr. Stretars, not whether or  
9 not the testimony should be provided at all. But that  
10 would be my brief answer to what Mr. Rubin has stated  
11 as his objection.

12 MR. RUBIN: And I think -- I understand that's  
13 a course that the State Water Resources Control Board  
14 takes often in these proceedings given the  
15 administrative adjudicatory nature of them, but in this  
16 case, there is no foundation for a personal knowledge  
17 of the issue.

18 CO-HEARING OFFICER BAGGETT: We'll overrule  
19 the objection. I think it was stated it's within  
20 review of the records, review of the files, it's  
21 knowledge he's relied upon.

22 And I think you will have ample opportunity on  
23 cross-examination as to expertise of the witness or the  
24 qualifications he has, and we'll allow you that  
25 opportunity on cross to challenge. I guess that will

1 go to the weight of this evidence, whether it is  
2 hearsay or not, and we'll allow Mr. Rubin on cross.

3 Proceed.

4 MR. SATO: Let's see. Once again, I can  
5 hardly remember where we started based upon this  
6 lengthy objection, but let's just start over. Please  
7 state your full name for the record.

8 MR. STRETARS: My name is Mark Stretars,  
9 M-a-r-k S-t-r-e-t-a-r-s.

10 MR. SATO: Have you taken the oath.

11 MR. STRETARS: Yes, I have.

12 MR. SATO: Please state your current  
13 occupation and place of employment.

14 MR. STRETARS: I'm a senior water resource  
15 control engineer. I work for State Water Resource  
16 Control Board, Division of Water Rights, the past  
17 30 years.

18 MR. SATO: Did you prepare the written  
19 testimony submitted in this proceeding on your behalf?

20 MR. STRETARS: I did.

21 MR. SATO: Is the information contained in  
22 that testimony true and correct to the best of your  
23 knowledge?

24 MR. STRETARS: Yes, it is.

25 MR. SATO: Okay. Can you please summarize how

1 the time schedule in the draft cease and desist order  
2 was created?

3 MR. STRETARS: First I would like to indicate  
4 there is a typo in my testimony. On page 5, paragraph  
5 1, there's a statement that references Section E of  
6 Rule 160. It should reference Section F of Rule 160.

7 Beyond that, the schedule, finding Condition 1  
8 of the CDO was developed using the Monterey Peninsula  
9 Water Management District's Regulation 15, expanded  
10 water conservation and standby rate rationing rules --  
11 excuse me. Not rule. Rationing plan, Rules 160  
12 through 167, PT-52A, which were created for the  
13 explicit purpose of allocating water in the event of  
14 unforeseen or extended periods of drought.

15 The Prosecution Team concluded there was no  
16 practical difference between a drought where there is  
17 limited water available for diversion and a water  
18 shortage where there's insufficient legal rights to  
19 allow the diversion of water.

20 On that basis, the time frame that was  
21 selected was primarily dictated by Cal Am's statements  
22 that the project would be completed by 2014. That's  
23 Exhibit PT-50. This project has been defined as the  
24 Coastal Water Project which is a seawater desalination  
25 project.

1           MR. SATO: Okay. And is it your testimony  
2 that you believe Cal Am can achieve the reduction  
3 schedule specified in the draft cease and desist order?

4           MR. STRETARS: Yes, I do believe so.

5           MR. SATO: And can you briefly explain how  
6 each percent reduction would be met by Cal Am?

7           MR. STRETARS: Cal Am's current average  
8 diversions from the Carmel River amount to 10,978 acre  
9 foot per year. Cal Am is also allowed to pump 3500  
10 and -- 3,504 acre feet per annum from the Seaside  
11 water -- groundwater basin.

12           Cal Am should have availability of 1,220 acre  
13 foot available for use based on newly developed sources  
14 at the time that this cease and desist action may be  
15 completed.

16           These amounts come from the following  
17 projects: 300 acre feet annually from the Sand City  
18 desalination project. 920 acre feet from the ASR Phase  
19 1 project, and that is considered the -- kind of the  
20 safe yield of that project. The permit that was issued  
21 under that permit actually entitles them to 2426 acre  
22 feet of water. This total amounts to 1,768 acre feet  
23 of new water or savings.

24           Excuse me. I skipped a thing here. Cal Am  
25 also has unaccountable losses that should be reduced to

1 7 percent level prescribed in the Monterey Peninsula  
2 Water Management District's conservation plan.

3           These calculated savings amount to 549 acre  
4 foot annually. This would then bring about a total  
5 1769 acre feet of new water or savings. As this  
6 relates to the 15 acre foot reduction levels, Cal Am is  
7 required under the reduction levels to drop to the  
8 amount of 9,592 acre foot annually.

9           This is basically a reduction of about  
10 386 acre feet from their average diversions calculated  
11 through previous testimony in the Phase 1 section of  
12 10,970 acre feet and in fact only an 893 acre foot  
13 reduction from the current 2006-2007 diversion amount  
14 of 10,405 -- 10,485 acre feet. This amount is easily  
15 covered -- this reduction amount is easily covered  
16 under the new sources and savings that occur.

17           This leaves about -- in addition, this leaves  
18 about 380 to about 870 acre foot of excess water  
19 available to apply against next step reduction.

20           20 percent reduction level requires that Cal  
21 Am drop its diversions from the Carmel River to  
22 9,028 acre feet annually. This requires additional  
23 savings of 568 -- 64 acre feet or a maximum depending  
24 on the amounts of -- calculated from the previous  
25 discussion -- a maximum 181 acre feet of water from

1 alternate sources or from conservation.

2           However, based on 2006-2007 water use figures,  
3 the new water savings and savings from the reduction of  
4 unaccountable meets the 20 percent reduction level.

5           The 35 and 50 percent levels each require  
6 additional step reductions of 1,693 acre foot  
7 respectively. Cal Am needs to increase the ASR system  
8 capacity to produce the full authorized amount. They  
9 need to develop Phase 2 of the ASR production, or they  
10 may make these reductions with conservation savings  
11 which may include elimination of irrigation or  
12 moratorium an all new connections.

13           MR. SATO: Did you calculate an amount that  
14 would be needed for health and safety issues for the  
15 affected communities?

16           MR. STRETARS: Yes, we did.

17           Staff relied on Title 23, code regulation  
18 Section 697(b), examples of amount considered  
19 reasonably necessary for domestic use along with  
20 discussions with the California Department of Health  
21 Services and Monterey County Department of Health.

22           From these discussions, an amount of  
23 75 gallons per day per person, gppd, was considered  
24 reasonable to provide public health and safety  
25 concerns.

1           In addition, Mr. Feurst in his testimony in  
2 Phase 1 of the hearing already testified that  
3 residential usage in the Monterey area is approximately  
4 70 gallons per day per person.

5           Using a population of 111,500 people and  
6 75 gallons per day per capita amount, I calculated that  
7 the amount of 9,367 acre foot is necessary for Cal Am's  
8 domestic use and public and health and safety needs.

9           Subtracting 3,504 acre feet per annum  
10 available from Seaside Groundwater Basin, the 300 acre  
11 foot available from the Sand City desalination project,  
12 and the 504 acre foot savings from unaccounted-for  
13 losses, the total diversion needed from the Carmel  
14 River would be about 5,014 acre foot annually.

15           This amount is less than 50 percent reduction  
16 level of 5,642 acre foot as defined in the draft CDO.

17           This does not include the additional 920-acre  
18 foot from the ASR project that would provide additional  
19 further health and safety requirements.

20           MR. SATO: Were there any other considerations  
21 that you took into account when you were putting  
22 together the time schedule requiring cutbacks in the  
23 authorized diversions from the Carmel River by Cal Am?

24           MR. STRETARS: Yes, there were.

25           First, I concluded that any reduction imposed

1 by Condition 2 of the draft order would not impact the  
2 amount of water necessary for domestic use and public  
3 health and safety needs. Even the reduction imposed  
4 does not fully eliminate Cal Am's unauthorized  
5 diversion of water from the Carmel River.

6 Second, Item 2 of the draft CDO provides the  
7 State Water Board Deputy Director For Water Rights  
8 shall have the authority to modify the reduction  
9 schedule upon a showing that such reduction would be --  
10 have adverse impacts on public health and safety  
11 concerns.

12 Third, Cal Am has the ability to file for a  
13 temporary permit under Water Code Section 1425 at any  
14 point in time, covers conditional water emergency  
15 diversions.

16 MR. SATO: Are you familiar with the  
17 suggestions made by Ms. Ambrosius regarding  
18 modifications to the draft CDO in her testimony?

19 MR. STRETARS: Yes, I am.

20 MR. SATO: Good. And would you agree or  
21 disagree with her proposals and why?

22 MR. STRETARS: Ms. Ambrosius through her  
23 testimony suggested the CDO is -- be related  
24 specifically to during the months of April through  
25 October, should require a reduction in the mean daily

1 diversion amount by the amount of the annual diversion  
2 suggested in our reduction schedules in the draft CDO.  
3 I do not support Ms. Ambrosius' recommendation.

4           While I believe that Cal Am's -- should to the  
5 best of their ability meet the CDO schedule primarily  
6 by reducing its diversions during the months of April  
7 through September of each year with the remaining  
8 reduction being satisfied during the rest of the year,  
9 any reduction in its daily diversion amount should not  
10 adversely affect Cal Am's ability to sufficiently  
11 supply water to customers for public health and safety  
12 concerns.

13           Evidence has not been presented to indicate  
14 that NFMS's proposal would have -- would not have a  
15 direct impact on Cal Am's ability to supply sufficient  
16 water to its customers for health and safety  
17 considerations.

18           MR. SATO: I have no further questions. We  
19 with have no further witnesses for the Prosecution  
20 Team.

21           CO-HEARING OFFICER BAGGETT: Thank you. We'll  
22 take ten minutes and come back for cross-examination.

23           (Recess)

24           CO-HEARING OFFICER BAGGETT: We'll go back on  
25 the record. So we'll conclude the cross-examination

1 and the case-in-chief for the Prosecution Team, and  
2 then we have Mr. Kassel after that. So with that, I  
3 guess we're missing some attorneys.

4 Are they -- I guess we could start and see if  
5 who's got -- Planning and Conservation League, do you  
6 have any cross? We don't need attorneys for this part.  
7 Sierra Club, will you have cross?

8 MR. SILVER: I will, yes.

9 CO-HEARING OFFICER BAGGETT: Okay. Then  
10 you're up, Mr. Silver.

11 CROSS-EXAMINATION BY MR. SILVER

12 FOR SIERRA CLUB

13 MR. SILVER: I just have a few questions for  
14 Ms. Ambrosius.

15 In your written testimony, you refer to a  
16 settlement agreement signed by Cal Am with NMFS which  
17 provides a certain amount of funding for improvement of  
18 habitat for the southern California central coast  
19 steelhead DPS. And could you indicate at this point  
20 what the present status is of that agreement with  
21 respect to funding?

22 MS. AMBROSIUS: That is -- basically is not  
23 completed yet. We have not received the funds yet.  
24 We're dealing with some issues of how those funds could  
25 be moved from Cal Am over to Fish and Game.

1           MR. SILVER: The agreement was signed in  
2 June 2006; is that correct?

3           MS. AMBROSIUS: Yes, it was.

4           MR. SILVER: And so I take it that not only  
5 has no money been deposited, but none of the projects  
6 that would be contemplated to be built or implemented  
7 with that money has been -- nothing has been done so  
8 far with regard to remediation under that agreement?

9           MS. AMBROSIUS: That's correct.

10          MR. SILVER: And would you have any  
11 anticipation as to when, assuming the issues are  
12 resolved with regard to the repository of the money as  
13 to when such remediation would be able to take place?

14          MS. AMBROSIUS: I would hope projects could  
15 start coming in to be funded under that almost  
16 immediately. Fish and Game will then be disbursing the  
17 funds, so it would be up to them how soon that could  
18 help.

19          MR. SILVER: And is it correct that the  
20 premise of the settlement agreement is to basically  
21 require or have by agreement this deposit of money from  
22 Cal Am in return for the recognition that Cal Am is  
23 committing illegal takes under Section 9 of the  
24 Endangered Species Act?

25          MR. RUBIN: I object to the question. I think

1 document speaks for itself.

2 CO-HEARING OFFICER BAGGETT: Sustained. Would  
3 you rephrase.

4 MR. SILVER: What is the purpose of the  
5 settlement agreement?

6 MS. AMBROSIUS: The purpose is to find some  
7 interim relief for the steelhead until an alternative  
8 water supply can be found and developed to try and keep  
9 the population of the steelhead alive until illegal  
10 water diversions are taken off the river.

11 MR. SILVER: And I take it that this is of  
12 some importance to National Marine Fisheries Service in  
13 light of its determination that this DPS is in imminent  
14 danger of extinction; is that correct?

15 MS. AMBROSIUS: Well, it's listed as  
16 threatened.

17 MR. SILVER: And what does it mean to be  
18 listed a threatened species?

19 MS. AMBROSIUS: That it is -- could be listed  
20 as endangered in the foreseeable future.

21 MR. SILVER: And being listed as endangered  
22 would mean that it is threatened with extinction?

23 MS. AMBROSIUS: Yes.

24 MR. SILVER: To the best of your knowledge,  
25 has Cal Am at any time applied to National Marine

1 Fisheries Service for an incidental take permit under  
2 Section 10 of the Act?

3 MR. RUBIN: I objection to the question on  
4 relevance grounds.

5 CO-HEARING OFFICER BAGGETT: Sustained, unless  
6 you can convince me otherwise.

7 MR. SILVER: Well, the testimony here, there  
8 is a reference earlier in the testimony to provisions  
9 of the Endangered Species Act whereby a developer, or  
10 in this case Cal Am, could apply for an incidental take  
11 permit under Section 10; and I'm just asking whether  
12 that has ever occurred.

13 CO-HEARING OFFICER BAGGETT: He's suggesting  
14 it's not relevant to this proceeding.

15 MR. SILVER: Well, it's relevant insofar as  
16 this witness has testified that there is a so-called  
17 settlement agreement between NMFS and Cal Am, and so  
18 I'm just asking whether or not there is in fact extant  
19 an incidental take permit. And I think that's a simple  
20 answer, and I think it is relevant to these proceedings  
21 to determine whether Cal Am has availed itself of a  
22 significant remedy.

23 CO-HEARING OFFICER BAGGETT: Mr. Rubin?

24 MR. LAREDO: The process to obtain incidental  
25 take is a procedural requirement. I think the

1 testimony that Ms. Ammbrosius has provided today  
2 provides a clear indication that NOAA Fisheries is  
3 regulating, to the degree reflected in her testimony  
4 and the exhibits, and to that extent I believe it's  
5 relevant. Whether or not California American Water has  
6 gone through a process to obtain take authorization is  
7 simply not relevant.

8 CO-HEARING OFFICER BAGGETT: I'll note the  
9 objection and overrule. Just answer the question.

10 MS. AMBROSIUS: Fish and Game -- or Cal Am  
11 has -- is required to do a Section 10 with the Fish and  
12 Wildlife Service under a settlement agreement with them  
13 that occurred back in the late '90s, I think.

14 And Fish and Wildlife Service did ask National  
15 Marine Fisheries Service to join in on that Section 10  
16 to do multispecies. And that Section 10 permit has  
17 been set aside, if you will, until determinations have  
18 been made with San Clemente Dam and the long-term water  
19 supply function.

20 MR. SILVER: So the answer to your question is  
21 there is no incidental take permit with respect to Cal  
22 Am in terms of its activities on the Carmel River?

23 MS. AMBROSIUS: They do not have one, no.

24 MR. SILVER: Thank you.

25 I have no further questions at this time.

1 CO-HEARING OFFICER BAGGETT: Carmel River  
2 Steelhead Association. Mr. Jackson.

3 CROSS-EXAMINATION BY MR. JACKSON  
4 FOR CARMEL RIVER STEELHEAD ASSOCIATION

5 MR. JACKSON: My first questions will be for  
6 Ms. Ambrosius. My name is Michael Jackson. I'm an  
7 attorney for the Carmel River Steelhead Association.  
8 In your testimony, you indicate that the  
9 National Marine Fisheries Service is responsible for  
10 protecting this group of steelhead?

11 MS. AMBROSIUS: Yes.

12 MR. JACKSON: To your knowledge, are you the  
13 only agency responsible for protecting this group of  
14 steelhead on the river?

15 MS. AMBROSIUS: Fish and Game also does. And  
16 everybody, really, that the public -- it is a Public  
17 Trust, so everybody is rather responsible for it.

18 MR. JACKSON: Is the species also listed under  
19 the California Endangered Species Act?

20 MS. AMBROSIUS: No, it's not.

21 MR. JACKSON: So what role does Fish and Game  
22 play?

23 MS. AMBROSIUS: They have oversight on the  
24 aquatic habitat and also the steelhead in the river.

25 MR. JACKSON: The -- you have indicated

1 that -- in your direct testimony that there are adverse  
2 impacts from California American Water's operations of  
3 their pumps on the Carmel River to juvenile rearing  
4 habitat. How do the pumps on the Carmel River affect  
5 the juvenile rearing habitat?

6 MS. AMBROSIUS: The pumps draw the underflow  
7 of the river down, and it dries the river back; and the  
8 juveniles need that habitat to survive. They need the  
9 water in the river to survive. It decreases the water.  
10 It decreases the amount of habitat. It decreases the  
11 food production in that area.

12 They also, because of the drybacks, they're  
13 required to rescue the fish. And just the act of  
14 rescuing can harm or kill fish. Those that aren't  
15 rescued die. It increases predation for those left in  
16 lingering pools from animals.

17 MR. JACKSON: Are you familiar with the  
18 activity of the Carmel River Steelhead Association in  
19 regard to fish rescue over the last 25 years?

20 MS. AMBROSIUS: Yes.

21 MR. JACKSON: Could you describe that?

22 MS. AMBROSIUS: They go out and rescue, mostly  
23 in the tributaries of the Carmel River. And they also  
24 in the recent years -- I'm not sure how many, how long  
25 it's been -- they follow up behind Monterey Peninsula

1 rescues and help them rescue the lingering fish in the  
2 pools.

3 CO-HEARING OFFICER BAGGETT: Mr. Rubin?

4 MR. RUBIN: Objection. I let the answer go  
5 before I raised it, but Mr. Jackson is asking questions  
6 that are open-ended questions most appropriate for  
7 direct examination.

8 I think the witness has testified and provided  
9 her direct examination; and if Mr. Jackson wants to ask  
10 questions that are appropriately tailored for  
11 cross-examination, I think that's appropriate.

12 CO-HEARING OFFICER BAGGETT: Noted. Thank  
13 you. Mr. Jackson, proceed.

14 MR. JACKSON: Thank you, your Honor.

15 In regard -- you indicated that Monterey  
16 Peninsula also rescues fish that are stranded by the  
17 operation of California American Water company's pumps.  
18 Could you describe that program please?

19 MS. AMBROSIUS: They go out, and as the river  
20 dries back they set up a program to go out and rescue  
21 the fish following the dryback of the river. And they  
22 place these fish either in the lagoon, in the upper  
23 portion of the wetted river, or in the Sleepy Hollow  
24 fish facility.

25 MR. JACKSON: Okay. You -- let's deal with

1 those one at a time. As Monterey Peninsula Water  
2 Management District or the Carmel River Steelhead  
3 Association rescue the fish, you indicate they place  
4 some of them in the lagoon?

5 MS. AMBROSIUS: That's correct.

6 MR. JACKSON: What is the importance of the  
7 lagoon to the fish rescue program?

8 MS. AMBROSIUS: It's another available habitat  
9 for the fish to rear in. Because the river dries up,  
10 there needs to be some areas for them to survive, and  
11 so they use the lagoon also as marine habitat, and it  
12 is very good rearing habitat.

13 CO-HEARING OFFICER BAGGETT: Mr. Rubin?

14 MR. RUBIN: I would raise the same objection  
15 as I raised previously.

16 Mr. Jackson is asking questions that are  
17 open-ended, and essentially it's a way of having  
18 Ms. Ambrosius testify for California Sport Fishing --  
19 excuse me -- Carmel River Steelhead Association. If he  
20 wants to ask leading questions appropriate for  
21 cross-examination, I have no objection.

22 CO-HEARING OFFICER BAGGETT: Okay.

23 Mr. Jackson, can you focus on questions  
24 directed from her testimony?

25 MR. JACKSON: I am, sir. I mean this is --

1 she talks about the fish rescue program in her  
2 testimony.

3 CO-HEARING OFFICER BAGGETT: Right, and it  
4 speaks for itself.

5 MR. JACKSON: The question of rescue would  
6 imply that the fish need to go somewhere when they are  
7 rescued. I'm trying to determine --

8 CO-HEARING OFFICER BAGGETT: Very good. So if  
9 you could ask specific questions to that point, I think  
10 was Mr. Rubin's objection.

11 CO-HEARING OFFICER WOLFF: I would ask  
12 Mr. Jackson a different question. Isn't this  
13 information provided in testimony by other parties  
14 that's going to be coming up later?

15 MR. JACKSON: I have no idea at this point  
16 what testimony is going to be allowed given the earlier  
17 ruling.

18 This is testimony from the agency, as her  
19 testimony indicated, that is responsible for the fish.  
20 This is a government agency that has a responsibility.  
21 It seems to me that in laying out what the options are  
22 on the river for a situation in which the river is  
23 dried up by illegal pumping that this is information  
24 that would be important for trying to figure out in  
25 your role what the remedy ought to be.

1           CO-HEARING OFFICER WOLFF: I understand that,  
2 and just to lay your concerns to rest, I think  
3 Mr. Baggett and I both stated that this type of  
4 information was permissible so long as you lay the  
5 background and the foundation for discussion of remedy.

6           So you shouldn't be worried about witnesses  
7 who have already submitted written testimony to this  
8 effect being excluded. They're going to be permitted  
9 to testify.

10           I have read testimony of witnesses who have  
11 already gone over this material. So I'm just bringing  
12 it up. Your cross-examination doesn't seem necessary  
13 to me. But proceed if you think it's critically  
14 necessary.

15           MR. JACKSON: Actually, the purpose of  
16 cross-examination was -- is to establish a record by  
17 which I can have a due process right in the future if I  
18 disagree with the result.

19           CO-HEARING OFFICER WOLFF: That's one --

20           MR. JACKSON: And --

21           CO-HEARING OFFICER WOLFF: -- allow you to  
22 proceed.

23           MR. JACKSON: -- and basically your rule gives  
24 me an hour. It says it's 52 minutes and 58 seconds so  
25 far, and I've been interrupted on these questions a

1 couple of times. They seem relevant to me. And I --

2 CO-HEARING OFFICER WOLFF: I'm allowing you to  
3 proceed, sir. Go ahead. I'm just wondering whether  
4 you're just duplicating something we're going to hear  
5 from another person later today. That's all. You're  
6 aware of it.

7 MR. JACKSON: Would you read back my last  
8 question since I'm sort of lost at this point?

9 (Record read)

10 MS. AMBROSIUS: I thought I answered that.

11 MR. JACKSON: Well, would you do it again?

12 MS. AMBROSIUS: It's additional habitat that  
13 the fish can survive in throughout the summer,  
14 hopefully survive in, because those fish do need to be  
15 placed somewhere.

16 MR. JACKSON: Is the lagoon sufficient  
17 throughout the summer for that purpose?

18 MR. RUBIN: I'm going to object to the  
19 question. Mr. Jackson's question asked if the lagoon  
20 is sufficient. I think it's ambiguous.

21 CO-HEARING OFFICER BAGGETT: Sustained. State  
22 what you mean by sufficient.

23 MR. JACKSON: Are there times in the summer in  
24 which the lagoon is insufficient in and of itself for  
25 the rescued fish because of changes in terms of oxygen

1 levels?

2 MS. AMBROSIUS: I'm not sure about the oxygen  
3 levels.

4 MR. JACKSON: In the course of the use of the  
5 lagoon for the rescued fish, are there times in which  
6 the fish would need to return up river in order to get  
7 through their life cycle?

8 MS. AMBROSIUS: There is times during the  
9 summer that for certain reasons that the lagoon does  
10 become less inhabitable; and if there was water in the  
11 river for them to move upstream to get out of that  
12 area, that would be good, yes.

13 MR. JACKSON: And is there water available for  
14 them upstream in these conditions?

15 MS. AMBROSIUS: Not usually during the low  
16 flow season.

17 MR. JACKSON: Why is that?

18 MS. AMBROSIUS: From the water diversions that  
19 happen.

20 MR. JACKSON: Has the US Fish and Wildlife  
21 Service developed a plan for the Carmel River  
22 steelhead?

23 MS. AMBROSIUS: The Fish and Wildlife Service  
24 does not regulate --

25 MR. JACKSON: Excuse me, the National Marine

1 Fisheries Service?

2 MS. AMBROSIUS: Could you repeat the question?

3 MR. JACKSON: Has the -- there's a -- as one  
4 of the exhibits there is a 2002 NMFS report on the  
5 Carmel River steelhead; is that correct?

6 MS. AMBROSIUS: It's on the flows?

7 MR. JACKSON: Yes.

8 MS. AMBROSIUS: That's the one?

9 MR. JACKSON: Does that document highlight the  
10 need for flows above the lagoon in some conditions in  
11 the summer?

12 MS. AMBROSIUS: I'm still not quite  
13 understanding what you are asking.

14 MR. JACKSON: The fish are rescued, put in the  
15 lagoon, and there are times in which they would need to  
16 retreat back up river but there's not water. Is that  
17 highlighted in your report?

18 MR. LAREDO: I'm going to object; it misstates  
19 the testimony provided.

20 CO-HEARING OFFICER BAGGETT: Sustained. Can  
21 you repeat the question please.

22 MR. JACKSON: Are there times in which the  
23 fish that are placed in the lagoon need to retreat back  
24 up river if there was available water?

25 MR. RUBIN: Again, I'm going to object. It

1 misstates testimony, if that's what Mr. Jackson is  
2 trying to do with his question. Ms. Ambrosius I don't  
3 believe testified there is a need for the fish to move  
4 upstream.

5 MR. JACKSON: And I believe she did, so.

6 MR. RUBIN: If I recall the testimony  
7 accurately, Ms. Ammbrosius said there might be times  
8 where it's beneficial for them to, but whether it's  
9 necessary or not is not something that I believe  
10 Ms. Ammbrosius testified to.

11 CO-HEARING OFFICER BAGGETT: Objection noted.  
12 Answer the question please.

13 MS. AMBROSIUS: I believe in a natural river  
14 system that fish do migrate back and forth from the  
15 lagoon upstream if they can. And it could be that the  
16 lagoon gets uninhabitable at certain times of the  
17 seasons, especially during the summertime, that they  
18 may need to do that but are enable to.

19 MR. JACKSON: When you mentioned the  
20 alternative of placing the fish that are rescued  
21 upstream did you mean upstream of the narrows?

22 MS. AMBROSIUS: Yes, I believe that's where  
23 they place them.

24 MR. JACKSON: And downstream of San Clemente  
25 Reservoir?

1 MS. AMBROSIUS: Yes.

2 MR. JACKSON: Now, the pumps affect the area  
3 below the narrows?

4 MS. AMBROSIUS: Well, there's also pumps above  
5 the narrows.

6 MR. JACKSON: And so the pumps -- there would  
7 be -- to protect these fish, is it necessary to have a  
8 water flow in the summer from San Clemente down?

9 MS. AMBROSIUS: Yes.

10 MR. JACKSON: Does the NMFS flow study  
11 indicate a recommendation in terms of flow?

12 MR. RUBIN: I'm going to object to the  
13 question, again ambiguous. I'm not sure what he's  
14 referring to when he says the NMFS flow study.

15 CO-HEARING OFFICER BAGGETT: Sustained. Could  
16 you be more specific to what study.

17 MR. JACKSON: In the 2002 flow study, is there  
18 a recommendation for the summer period in terms of flow  
19 below San Clemente Dam?

20 MS. AMBROSIUS: I think there is, and I'm not  
21 quite sure what it is. I could find it for you. I  
22 think it shows different flows that are needed for each  
23 season, wintertime, springtime.

24 MR. JACKSON: Yes, and I was going to go  
25 through those flows, but we're at this point talking

1 about the need for juvenile rearing below San Clemente  
2 Dam.

3 CO-HEARING OFFICER BAGGETT: Is there a  
4 question pending?

5 MR. JACKSON: Yes. What is the flow  
6 requirement or recommendation below San Clemente Dam  
7 during the juvenile rearing?

8 CO-HEARING OFFICER BAGGETT: And the witness  
9 answered she wasn't sure; it's in the documents  
10 someplace. So it's asked and answered.

11 MR. JACKSON: And I've asked her to check the  
12 document.

13 MS. AMBROSIUS: It looks like it's 5 CFS.

14 CHIEF COUNSEL TAYLOR: Pardon me. Is this  
15 document PT-45? Is that the document?

16 MS. AMBROSIUS: I'm not sure.

17 MR. SATO: I'm sorry; we'll have to look it  
18 up.

19 CHIEF COUNSEL TAYLOR: I couldn't hear you,  
20 Mr. Sato.

21 MR. SATO: We'll look -- it is one of those,  
22 the exhibits we submitted. I don't have it right in  
23 front of me.

24 CHIEF COUNSEL TAYLOR: All right. There was  
25 some confusion because PT-45 is identified as a

1 September 18, 2001 document, and Mr. Jackson referred  
2 to a 2002 document. I think -- I'm trying to  
3 figure out --

4 MS. AMBROSIUS: Is it titled Instream Flow  
5 Needs For Steelhead on the Carmel River?

6 CHIEF COUNSEL TAYLOR: Yes.

7 CO-HEARING OFFICER BAGGETT: Would someone  
8 please identify the --

9 MR. SATO: It's Prosecution Team 45.

10 CO-HEARING OFFICER BAGGETT: Thank you.

11 CHIEF COUNSEL TAYLOR: Thank you.

12 MR. JACKSON: In examining the instream flow  
13 needs for the Carmel River, is the 5 CFS a continual  
14 flow?

15 MS. AMBROSIUS: Yes.

16 MR. JACKSON: And is that a minimum flow?

17 MS. AMBROSIUS: This report was really based  
18 to determine what additional diversions could occur on  
19 the river, and these are recommendations of what flows  
20 should occur on the river -- what diversions could be  
21 allowed to keep those diversions on the river.

22 MR. JACKSON: So the 5 CFS through the  
23 juvenile rearing period was a minimum flow for the  
24 steelhead?

25 MS. AMBROSIUS: I'm not sure if it was

1 determined to be a minimum flow.

2 MR. JACKSON: All right. Now, calling your  
3 attention to, in the same document, to the wet period  
4 of the year from January to March, is there a  
5 recommendation for a flow for the steelhead during that  
6 period of time?

7 MS. AMBROSIUS: It would be between  
8 December 15th and April 15th?

9 MR. JACKSON: Yes.

10 MS. AMBROSIUS: It shows that what they call  
11 an attraction event within the bypass of 100 CFS  
12 between Los Padres and San Clemente, a minimum bypass  
13 flow of 90 between San Clemente Dam and Rivermile 5.5,  
14 and minimum bypass flow of 60 CSF between Rivermile 5.5  
15 and the Lagoon.

16 MR. JACKSON: For the period of December 15th  
17 to April 15?

18 MS. AMBROSIUS: Yes.

19 CO-HEARING OFFICER BAGGETT: Mr. Rubin?

20 MR. RUBIN: I'm going to object to the  
21 question if we continue down this path of asking  
22 essentially the witness to provide information that's  
23 within the exhibits. As I'm well aware, I was limited  
24 in Phase 1 from doing that and --

25 CO-HEARING OFFICER BAGGETT: I understand.

1           Mr. Jackson, could you explain to us what  
2 point you're trying to make? If this exhibit comes in  
3 as testimony, we have the information.

4           If you have problems with the information or  
5 questions about the information in the exhibit, I think  
6 that's appropriate. But just to restate it, it's  
7 already there. We don't need the witness to read her  
8 testimony.

9           MR. JACKSON: I'm not having the witness read  
10 her testimony. I'm using these numbers preliminarily  
11 to ask her why NMFS believes that these flows are  
12 important for the maintenance of the Carmel River  
13 steelhead, and --

14           CO-HEARING OFFICER BAGGETT: Well, then ask  
15 the question because I certainly haven't heard that  
16 answer.

17           MR. RUBIN: And if he asked the question, I  
18 obviously would object to it at this point. It gets to  
19 what -- based upon the statement Mr. Jackson made, he's  
20 seeking information on what flows should be released  
21 from the dam. And again, that's outside the scope of  
22 this proceeding.

23           CO-HEARING OFFICER BAGGETT: We understand  
24 that. We've made the ruling on that issue.

25           So if you could just expedite. We can read

1 the flows, and you can summarize that in your closing  
2 case. The evidence is there. We don't need to hear  
3 her read her full report.

4 MR. JACKSON: Ms. Ambrosius, are these flows  
5 affected by the pumping of the California American  
6 Water Company?

7 MR. LAREDO: I'm going to object as ambiguous:  
8 These flows. What are --

9 CO-HEARING OFFICER BAGGETT: Very good. Could  
10 you rephrase the question, be a little more specific.

11 MR. JACKSON: Yeah.

12 These flows are released from upstream, are  
13 they reaching the lagoon?

14 MS. AMBROSIUS: During the low flow season,  
15 they are not.

16 MR. JACKSON: And that causes the adverse  
17 effects that you testified to on direct?

18 MS. AMBROSIUS: Yes.

19 MR. JACKSON: If the pumping were not taking  
20 place would the flows reach the lagoon?

21 MS. AMBROSIUS: Not in ever year.

22 MR. JACKSON: Why not?

23 MS. AMBROSIUS: There is other pumping that's  
24 going on, but it also could be a critically dry year  
25 where naturally the flows didn't reach the lagoon.

1           MR. JACKSON: And in that circumstance, would  
2 that require, given the threatened nature of the Carmel  
3 River Steelhead Association, higher flows from  
4 upstream?

5           MR. RUBIN: I'm going to object to the  
6 question. I think Mr. Jackson misspoke, for purpose of  
7 the record, classified the Carmel River Steelhead  
8 Association as, I think, endangered.

9           MR. JACKSON: Excuse me. The Carmel River  
10 steelhead. He's right. Although the association is  
11 somewhat endangered by Cal Am.

12          MS. AMBROSIUS: We don't require rescuing fish  
13 because the fish are threatened under the ESA.

14          MR. JACKSON: What actions has the National  
15 Marine Fisheries Service taken to protect the lagoon  
16 environment from Cal Am's diversions?

17          MS. AMBROSIUS: Right now, National Marine  
18 Fisheries Service sits on a group that tries to work  
19 out the management of the lagoon. I'm not specifically  
20 involved with that, so I can't speak to that.

21          MR. JACKSON: Have there been occasions in  
22 which the lagoon habitat has been destroyed by lack of  
23 fresh water inflow?

24          MS. AMBROSIUS: I'm not sure what you mean by  
25 destroyed.

1           MR. JACKSON: Have -- has the -- there been  
2 occasions in which the lagoon has been made less useful  
3 as habitat because of pumping upstream?

4           MS. AMBROSIUS: The lack of --

5           MR. RUBIN: I'm going to object to the  
6 question as ambiguous again, and I'm not sure what  
7 Mr. Jackson is referring to in terms of habitat from  
8 different species for --

9           CO-HEARING OFFICER BAGGETT: I would sustain  
10 the objection.

11           Could you be more specific? I mean, it's a  
12 pretty big watershed and --

13           MR. JACKSON: Sure.

14           CO-HEARING OFFICER BAGGETT: -- these are  
15 pretty broad. Habitat is a broad question.  
16 Specifically what habitat, where.

17           MR. JACKSON: What role does the lagoon play  
18 in the life -- the yearly life cycle of the Carmel  
19 River steelhead?

20           MS. AMBROSIUS: It's used as rearing habitat  
21 for the juveniles and also smolt production. When the  
22 mouth is open, the lagoon, the adults pass through the  
23 lagoon on their way up the river for spawning.

24           MR. JACKSON: At the time that the lagoon is  
25 playing a role as rearing habitat, is there a specific

1 mix of salt and fresh water that is required for it to  
2 be optimum habitat?

3 MS. AMBROSIUS: Yes. The more fresh water,  
4 the more optimal.

5 MR. JACKSON: Is the pumping having an effect  
6 of the amount of fresh water --

7 MR. RUBIN: I'm going to object.

8 MR. JACKSON: -- habit in the lagoon?

9 MR. RUBIN: I'm going to object to the  
10 question again; it's ambiguous as to what pumping.

11 CO-HEARING OFFICER BAGGETT: Sustained.

12 Could you -- there's more than one well here.  
13 Could you say what pumping where, what pool? This  
14 isn't helping us toward remedies, these broad  
15 statements.

16 MR. JACKSON: I'm actually talking about the  
17 lagoon. I don't know. You want me to break the lagoon  
18 into sections?

19 MR. RUBIN: The objection that I raised went  
20 to characterization of wells.

21 CO-HEARING OFFICER BAGGETT: Exactly. That's  
22 why it's sustained.

23 Would you rephrase, be more specific.

24 MR. JACKSON: Which wells do you believe are  
25 affecting the fresh water for the lagoon during the

1 time that it's serving as rearing habitat?

2 MS. AMBROSIUS: I would say most any well  
3 that's being used during that time.

4 MR. JACKSON: Are some of -- I think your  
5 direct testimony said 85 percent of the water that --  
6 on the Carmel River that was being taken by wells was  
7 the Carmel -- or over the Cal Am wells?

8 MS. AMBROSIUS: Yes. 85 percent of the  
9 diversions are from Cal Am.

10 MR. JACKSON: Then would it be fair to say  
11 that 85 percent of the effect on the rearing habitat  
12 caused by lack of fresh water inflow in the lagoon was  
13 taking place because of the Cal Am well pumping?

14 MS. AMBROSIUS: (No audible response)

15 MR. JACKSON: Now going upstream, are there  
16 effects in individual pools above the lagoon from the  
17 pumping of the California American pumps?

18 MR. RUBIN: I'm going to object to the  
19 question; it's ambiguous as to effects.

20 CO-HEARING OFFICER BAGGETT: Sustained. Could  
21 you be more specific.

22 MR. JACKSON: Yes.

23 Are there -- does the dewatering caused by the  
24 pumping from the Carmel River by California American  
25 have effect on pools upstream of the lagoon during the

1 juvenile rearing time period?

2 MS. AMBROSIUS: Yes.

3 MR. JACKSON: And what are those effects?

4 MS. AMBROSIUS: Well, the pools become  
5 desiccated as the river dries up and traps the fish in  
6 the pools.

7 MR. JACKSON: Is there -- as the pumping takes  
8 place, is there anyplace those fishing can go to  
9 survive?

10 MS. AMBROSIUS: Well, they can move upstream  
11 to remain in the wetted area, or they can move down  
12 into the lagoon.

13 MR. JACKSON: So they either move downstream  
14 in the lagoon or upstream in the Carmel --

15 MS. AMBROSIUS: Yes.

16 MR. JACKSON: -- valley?

17 How far do they have to move upstream before  
18 the effects of the California American wells disappear?

19 MS. AMBROSIUS: It depends on the water year  
20 and how much pumping is going on. It varies from year  
21 to year, the dryback.

22 MR. JACKSON: So if the pumping during the  
23 summer were reduced, the Carmel River steelhead  
24 juvenile rearing habitat would expand in your opinion?

25 MR. RUBIN: I'm going to object to the

1 question; ambiguous. Mr. Jackson said if the pumping  
2 were reduced, and again he hasn't defined who would be  
3 reducing, what wells would be reducing. Ambiguous.

4 CO-HEARING OFFICER BAGGETT: Sustained. Could  
5 you be a little more specific. Pumping -- all pumping?

6 MR. JACKSON: All Cal Am pumping below the  
7 narrows, if all Cal Am pumping below the narrows were  
8 reduced, would that expand juvenile rearing habitat for  
9 the Carmel River steelhead on the river?

10 MS. AMBROSIUS: It potentially could,  
11 depending on the water year.

12 MR. JACKSON: You heard Mr. Stretars'  
13 testimony earlier?

14 MS. AMBROSIUS: Yes.

15 MR. JACKSON: If in fact your recommendations  
16 were accepted by the Board, do you believe that there  
17 would be improvement in the habitat for the Carmel  
18 River steelhead?

19 MS. AMBROSIUS: Yes.

20 MR. JACKSON: And what would cause that  
21 improvement?

22 MS. AMBROSIUS: That there would be portions  
23 of the river that would remain wetted year round, and  
24 the portions that do dry up would not dry up quite as  
25 soon as they do now, and that would allow the habitat

1 to remain and the fish to be able to remain in the  
2 system longer.

3 MR. JACKSON: You indicated in your direct  
4 testimony that there were effects that included effects  
5 to riparian habitat from the pumping of the wells below  
6 the narrows?

7 MR. RUBIN: I'm going to object again; the  
8 question is ambiguous.

9 CO-HEARING OFFICER BAGGETT: Overruled. Just  
10 answer the question.

11 MR. JACKSON: What are those effects?

12 MS. AMBROSIUS: The decrease in the water  
13 table affects the riparian where there is a die-off,  
14 the riparian vegetation, and that causes bank erosion.

15 MR. JACKSON: Is the riparian vegetation  
16 important to the steelhead?

17 MS. AMBROSIUS: Absolutely.

18 MR. JACKSON: How?

19 MS. AMBROSIUS: It provides shade which keeps  
20 the water temperature lower. It provides a food  
21 source. It provides large woody debris which is wood  
22 that gets recruited into the river that the fish --  
23 there's food production on the wood, there's shelter.  
24 It -- the wood also scours out pools.

25 MR. JACKSON: You also indicated in your

1 direct testimony that the Carmel River steelhead are  
2 affected by -- in terms of fish passage impediments; is  
3 that correct?

4 MS. AMBROSIUS: Yes.

5 MR. JACKSON: Where are those located?

6 MS. AMBROSIUS: They could be located at  
7 different places, but at times there are riffles  
8 because of the lower flows that the riffles block  
9 passage.

10 MR. JACKSON: Do they also include  
11 infrastructure owned by Cal Am?

12 MS. AMBROSIUS: The two dams also.

13 MR. JACKSON: And what is the effect of San  
14 Clemente Dam on the ability of different life stages of  
15 the Carmel River steelhead?

16 MS. AMBROSIUS: Well, the dam causes a number  
17 of problems. It causes passage delay. The fish ladder  
18 is not built to criteria, and so all the fish cannot  
19 potentially pass the ladder. Because of the state that  
20 the reservoir is in now with the increased sediment, it  
21 can cause fish passage problems through the reservoir  
22 through the sediment, and it also delays fish coming  
23 back down, the smolts and the kelts, getting down over  
24 the dam as they return back.

25 MR. JACKSON: Are there potential improvements

1 at the infrastructure owned by Cal Am on the river that  
2 you believe would help sustain the Carmel River  
3 steelhead?

4 MR. RUBIN: I'm going to object to the  
5 question. I think it goes outside the ruling you  
6 articulated earlier today. Question asks about  
7 improvements to facilities that are outside of the  
8 scope of this proceeding.

9 CO-HEARING OFFICER BAGGETT: I would sustain.

10 MR. JACKSON: And I would -- might I ask for a  
11 little clarification on the sustaining of the objection  
12 so that as every other witness testifies I don't need  
13 to make the same objections. Are we ruling that  
14 anything outside the Carmel River pumps --

15 CO-HEARING OFFICER BAGGETT: No.

16 MR. JACKSON: We're not.

17 CO-HEARING OFFICER BAGGETT: But the operation  
18 of the dam and the water right of that dam operation is  
19 not noticed, not part of this proceedings. Remedies  
20 affecting overdraft are. And I think there's some  
21 parties who are going to be testifying to that.

22 MR. JACKSON: Then I have no further  
23 questions.

24 CO-HEARING OFFICER BAGGETT: Public Trust  
25 Alliance? Any cross-examination? California Salmon

1 Steelhead Association? Monterey Peninsula Water  
2 Management District, do you have any questions?

3 MR. LAREDO: Yes, I do. Thank you.

4 CROSS-EXAMINATION BY MR. LAREDO

5 FOR MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

6 MR. LAREDO: Good morning. My name is David  
7 Laredo, general counsel for the Monterey Peninsula  
8 Water Management District. I have a few questions for  
9 Mr. Stretars.

10 Mr. Stretars, at page 2 of your testimony, you  
11 make the comment that based upon the above information,  
12 Cal Am has the potential to potentially save or reduce  
13 its Carmel diversions by the following amounts, and  
14 then you list several items, one of which is the ASR  
15 project.

16 I assume you are referring to the Monterey  
17 Peninsula Water Management District ASR project?

18 MR. STRETARS: That's correct.

19 MR. LAREDO: That's the one that's permitted  
20 by the --

21 MR. JACKSON: Mr. Baggett, I'd like to object  
22 to the ASR project. It's outside the notice. Any  
23 testimony in regard to the ASR project is outside the  
24 notice. It's a different project, a different license.

25 MR. LAREDO: Mr. Baggett, this is in the

1 testimony. I'm asking a question about the testimony.  
2 I believe I should have the opportunity to  
3 cross-examine on this.

4 CO-HEARING OFFICER BAGGETT: I would overrule.

5 MR. LAREDO: I believe, again, you are  
6 referring to the District's project that is under State  
7 Water Resources Control Board appropriative right  
8 permit 20808A?

9 MR. STRETARS: That's correct.

10 MR. LAREDO: Are you aware of how much water  
11 is actually in storage because of that project?

12 MR. STRETARS: In storage because of that  
13 project?

14 MR. LAREDO: Yes. How much water has that  
15 project stored?

16 MR. JACKSON: Again, I would object to this on  
17 the grounds of relevance. It's a license that is not  
18 noticed, and it's about storage which is not relevant  
19 to Cal Am's pumping.

20 CO-HEARING OFFICER BAGGETT: Mr. Rubin?

21 MR. RUBIN: I too have questions about ASR,  
22 and I believe that they are extremely relevant because  
23 they are part of the foundation that the Prosecution  
24 Team has presented for its conclusion that the  
25 reduction schedules that are being proposed in the

1 draft cease and desist order can occur without  
2 jeopardizing the public health and safety.

3 MR. LAREDO: And Mr. Baggett,  
4 cross-examination --

5 CO-HEARING OFFICER BAGGETT: Continue.  
6 Objection overruled. I think they are relevant.

7 This is what I think people have asked for,  
8 what the prosecution's asked for, to lower diversions  
9 and the alternative sources, and this is one of the  
10 alternative sources. And I think if this Board is  
11 going to craft any remedy or any order, we need to  
12 understand what the alternatives, are they viable, and  
13 what can they provide.

14 So continue.

15 MR. LAREDO: So my question to you,  
16 Mr. Stretars, is: Are you aware of how much water is  
17 presently in storage by reason of that project?

18 MR. STRETARS: Not specifically. I know they  
19 run anywhere from 10 to 300 acre feet annually in the  
20 testing phase. The purpose is through July to go up to  
21 2,426. I think it's been stated by both yourself and  
22 Cal Am that there is a practical limit on that based on  
23 the requirements of the NMFS flows in the river that  
24 would indicate the project is limited to somewhere  
25 around 920 foot annually as a reasonable quantity taken

1 in storage.

2 MR. LAREDO: So the 920 acre feet is an  
3 average yield for the project?

4 MR. STRETARS: That would be correct, yes.

5 MR. LAREDO: Okay. But that doesn't mean that  
6 each and every year there would be 920 acre feet  
7 available because of that. There will be seasonal  
8 variation; is that correct.

9 MR. STRETARS: Seasonal variation, right.

10 MR. LAREDO: And also variation from season to  
11 season.

12 MR. STRETARS: Yes.

13 MR. LAREDO: So if there were less than  
14 920 acre feet in storage, then the increment of water  
15 that you could save based upon your testimony could not  
16 be achieved?

17 MR. STRETARS: That is correct.

18 MR. LAREDO: And your statement that, in the  
19 following paragraph, these immediately achievable  
20 efforts -- if in fact there's not that amount of  
21 storage, then that component of that effort would not  
22 be immediately achievable?

23 MR. STRETARS: I would have to say possibly.  
24 The issue again would be as to how you -- how you  
25 extract it. Whether you get the --

1           MR. LAREDO: But if the water has not been  
2 stored, it cannot be recovered?

3           MR. STRETARS: That's correct.

4           MR. LAREDO: And if it cannot be recovered for  
5 use, then it would not be an achievable source for a  
6 reduction; is that accurate?

7           MR. STRETARS: Again, I would say -- again, it  
8 depends on your extraction levels. You may have stored  
9 it from one year to next, and depending on what you  
10 needed, you may have some carryover in there which can  
11 allow to be extracted at that point in time.

12          MR. LAREDO: And I would agree with that; but  
13 if the entire carryover is less than the 920, then  
14 there would be no water to access; is that correct?

15          MR. STRETARS: Under that permit, yes, under  
16 that basis.

17          MR. LAREDO: Okay. Also in this same  
18 paragraph, you characterize water that's available from  
19 the Sand City desal plant. Are you familiar with that?

20          MR. STRETARS: Yes.

21          MR. LAREDO: Do you know whether that plant is  
22 presently operational?

23          MR. STRETARS: At this moment in time, I do  
24 not believe so. But in my testimony, by the time the  
25 order is issued presumably it may be.

1           MR. LAREDO: But if it were not operational,  
2 then that also would not be a project that would  
3 provide an immediately achievable alternate source; is  
4 that accurate?

5           MR. STRETARS: I think that's accurate, but  
6 it's a presumption on your side.

7           MR. LAREDO: I'm just asking a hypothetical.

8           I'd like to take you through the calculation  
9 shown on page 2 with respect to the savings that would  
10 result from the Sand City desal plant. I believe you  
11 show a nominal savings of 300 acre feet at the  
12 beginning, and then that will be reduced over time; is  
13 that accurate?

14          MR. STRETARS: Yes.

15          MR. LAREDO: And what is the ultimate yield  
16 that would be available from that project for Cal Am to  
17 reduce its Carmel River extractions?

18          MR. STRETARS: Yield 94 acre feet.

19          MR. LAREDO: And therefore, 206 acre feet of  
20 that 300 yield would be used for some other purpose?

21          MR. STRETARS: Yes.

22          MR. LAREDO: I'd like to point out on your  
23 testimony on page 2, I believe that your -- you made an  
24 arithmetic error, the savings reduced over the course  
25 of time. You take the number 849 and reduce it by 94.

1 Should not that accurately be 849 reduced by 206?

2 MR. STRETARS: Let me see. Yeah, this is --  
3 within that parentheses, there is an error. The  
4 statement of 643 acre foot I believe is correct. It's  
5 the -- the identification of the 849 is improper.

6 MR. LAREDO: So the remainder that would be  
7 available upon full implementation and operation of the  
8 Sand City desal plant would be 94 acre feet available  
9 to Cal Am?

10 MR. STRETARS: Yes.

11 MR. LAREDO: On page 6 of your testimony, you  
12 recap some of the numbers that are available but you  
13 refer only to the 300 acre feet available from the Sand  
14 City desal plant. In the long-term, that number should  
15 be 94, not 300; is that accurate?

16 MR. STRETARS: In the long-term, yes.

17 MR. LAREDO: I'd like to turn your attention  
18 to page 3 of your testimony. I believe you make some  
19 comments about the timing on the evaluation of Cal Am's  
20 Coastal Water Project, and I believe your statement at  
21 the end of the paragraph, quote:

22 This competitive evaluation of water  
23 supply to the Monterey area could delay  
24 the 2014 time line unless the State  
25 Water Board requires action by a date

1           certain.

2           You are familiar with that statement?

3           MR. STRETARS: Yes.

4           MR. LAREDO: What is your familiarity with  
5 CEQA?

6           MR. STRETARS: To that project?

7           MR. LAREDO: Yes.

8           MR. STRETARS: Nothing per se.

9           MR. LAREDO: Do you have some general  
10 familiarity with the California Environmental Quality  
11 Act?

12          MR. STRETARS: Yes, I do.

13          MR. LAREDO: You do agree that that Act  
14 requires alternatives analysis before a project can be  
15 certified?

16          MR. STRETARS: Yes, I do. At least I would.

17          MR. LAREDO: And that the time for  
18 implementation of a water project would be in part  
19 dependent upon the completion of the CEQA process?

20          MR. STRETARS: Yes, it is.

21          MR. LAREDO: And it would also in part be  
22 dependent upon permits being obtained by Lead and  
23 Responsible Agencies?

24          MR. STRETARS: Yes.

25          MR. LAREDO: You're -- I question, then, what

1 you meant by the statement that:

2 Competitive evaluation of water supply  
3 to the Monterey area could delay the  
4 2014 time line unless the State Board  
5 requires action by a date certain.

6 How can the State Board require action that  
7 would not fully comply with CEQA or Lead and  
8 Responsible Agency permits?

9 MR. STRETARS: When I was referring to date  
10 certain action by the State Board, I was not referring  
11 to any reference to the Coastal Project or the  
12 Ratepayers' additional environmental. I was just  
13 referring to a date certain action by this Board draft  
14 CDO. To commit to --

15 MR. LAREDO: How does that relate to the  
16 competitive evaluation of water supply?

17 MR. STRETARS: I think there are two different  
18 senses in that sentence. And you're apparently reading  
19 it differently than I was reading it.

20 MR. LAREDO: Well, help me read it. What did  
21 you mean?

22 MR. STRETARS: The competitive evaluation  
23 relative to things required in the PUC would appear to  
24 want to slow down the process, okay?

25 MR. LAREDO: Or comply with law.

1           MR. STRETARS: Or comply -- well, in either  
2 case. Comply with law, but also slowing down a process  
3 relative to getting to an end result whereby the Board,  
4 looking at it from entirely separate standpoint of we  
5 have conversion of water here, need to take an action  
6 to resolve that issue.

7           MR. LAREDO: I think I'll move on.

8           On page 5, the last partial sentence, you  
9 insert the statement:

10           Cal Am could satisfy this health and  
11           safety requirement by first fully  
12           utilizing -- I'm sorry -- by first fully  
13           using this 3,400 -- 3,504 AFA allotment  
14           from the Seaside Groundwater Basin.

15           Are you aware that the Seaside Groundwater  
16 Basin adjudication does not set that number, 3,504, as  
17 a fixed amount but that instead that will reduce over  
18 time?

19           MR. STRETARS: At the time I wrote this, I was  
20 not. It was not an issue that came up.

21           MR. LAREDO: Are you now aware that that  
22 amount will reduce by way of the adjudication decision?

23           MR. JACKSON: Mr. Baggett, I'm going to object  
24 to this line of questioning on the grounds that we're  
25 now talking about an adjudication process in some other

1 venue. We've been talking about the process involving  
2 the PUC as well, and those are completely outside the  
3 notice part of this hearing, and --

4 CO-HEARING OFFICER BAGGETT: Let's hear  
5 Mr. Laredo.

6 MR. LAREDO: The context in which this witness  
7 raises that point is concerning the health and safety  
8 needs of the community, and it recognizes that Cal Am  
9 has a limited number of sources of supply available to  
10 it, one of which is from the Seaside Groundwater Basin.

11 This witness testified that there was a  
12 discrete amount of water from that basin; but by his  
13 own admittance, this witness testified he did not fully  
14 and accurately convey that number. I believe it's  
15 important for this Board to know what the real amount  
16 of water is that's available to Cal Am and the  
17 community.

18 CO-HEARING OFFICER BAGGETT: Okay. Concur;  
19 overruled. I think this is extremely relevant, just  
20 like PUC's authorities which we ruled on last time are  
21 relevant to this Board to understand. If we craft a  
22 remedy that's not legally implementable, it's a real  
23 challenge if the water is not real water. So continue  
24 with the line of questions.

25 MR. LAREDO: Are you aware that the increment

1 of water available from the Seaside Groundwater Basin  
2 adjudication decision to Cal Am will decrease over time  
3 from 3,504 acre feet to 3,200 acre feet?

4 MR. STRETARS: Yes, I am. I am now fully  
5 aware of that and taking it into consideration.

6 MR. LAREDO: So taking a look at those two  
7 numbers in that sentence then, the 3,504 number should  
8 be corrected to 3,200, and the 300 acre feet number  
9 will actually be reduced over time to 94 acre feet; is  
10 that accurate?

11 MR. STRETARS: Take that apart again please.

12 MR. LAREDO: The 300 acre feet from Sand  
13 City --

14 MR. STRETARS: No, the 3500.

15 MR. LAREDO: The 3,504 acre feet will be  
16 reduced over time to 3,200.

17 MR. STRETARS: Okay. I'm aware of that. I  
18 agree with you.

19 MR. LAREDO: And 300 acre feet will be reduced  
20 from 300 to 94.

21 MR. STRETARS: That's correct. Over time.

22 MR. LAREDO: I'd like to turn your attention  
23 to the topic of unaccounted-for water. What do we mean  
24 by that?

25 MR. STRETARS: Unaccounted-for water would be

1 loses to the system through whatever, the leakage,  
2 sewer fleshing, fires, somewhere there's not a meter  
3 attached.

4 MR. LAREDO: And your testimony anticipates  
5 that the current standard of 12 percent unaccounted  
6 water can be reduced to 7 percent; is that accurate?

7 MR. STRETARS: My testimony drew from Monterey  
8 Peninsula's --

9 MR. LAREDO: I'm not questioning you, just  
10 asking: Is that your testimony?

11 MR. STRETARS: The question again?

12 MR. LAREDO: Is it your testimony that  
13 unaccounted-for water may be reduced from 12 percent to  
14 7 percent?

15 MR. STRETARS: Yes.

16 MR. LAREDO: Are you aware that not all  
17 reductions in unaccounted-for water will actually  
18 result in water savings?

19 MR. STRETARS: Yes.

20 MR. LAREDO: So if an increment of  
21 unaccounted-for water was actually unmetered sales  
22 because of faulty meters or not fully calibrated  
23 meters, correcting those faults, calibrating those  
24 meters, would just increase meter sales but would not  
25 result in conservation. Would you agree with that?

1           MR. STRETARS: I'm not sure where you're  
2 going, but to some extent yes.

3           MR. RUBIN: So are you able to testify to what  
4 increment can be saved by reducing the unaccounted-for  
5 water from 12 percent to 7 percent?

6           MR. STRETARS: I'm not sure how to respond to  
7 your question.

8           MR. LAREDO: Can you calculate the savings  
9 from this change?

10          MR. STRETARS: Direct from the meter situation  
11 available, yes. From the numbers provided within  
12 Monterey and Cal Am's monthly reports, identified  
13 percentages claimed to be there, yes.

14          MR. LAREDO: But wouldn't that just tell you  
15 the increment of water that would then be unaccounted  
16 for? That doesn't necessarily mean that water can be  
17 saved or conserved, does it?

18          MR. STRETARS: If that water is lost to the  
19 system through leakage out of the system and you  
20 repaired the leaks, you've -- that water's been saved.

21          MR. LAREDO: That's correct. Leakage would be  
22 saved.

23          MR. STRETARS: That considered unaccountable  
24 loss.

25          MR. LAREDO: That's correct; that's a portion

1 of it. But if there is line flushing, and we now  
2 accounted for line flushing, the line flushing is still  
3 a requirement to operate the system. That's not  
4 conserved water, is it?

5 MR. STRETARS: Depends on how you do it. Once  
6 you accounted for it, maybe you don't need to do that  
7 much. That's a conservation measure that you as a  
8 district are going to have to take to decide that you  
9 can meet the constraints.

10 MR. LAREDO: That's true. Identifying is the  
11 first step. Then you decide whether you can conserve  
12 or save some of that water. But just identifying it  
13 doesn't cause the savings, does it?

14 MR. STRETARS: Identifying, no.

15 MR. LAREDO: Okay. Same thing with unmetered  
16 sales. You can decide whether some is theft or some is  
17 just faulty meters. But if it's just faulty meters,  
18 that doesn't result in the savings, correct?

19 MR. STRETARS: That's correct.

20 MR. LAREDO: So are you able to testify to  
21 that increment of savings that would in fact be  
22 conserved water?

23 MR. STRETARS: I'm able to testify the amount  
24 if we would proceed you could potentially conserve.

25 MR. LAREDO: I'd like to direct your attention

1 to page 4 of your testimony at the top. I believe the  
2 first sentence includes the statement:

3 The Prosecution Team recognized that  
4 abrupt termination of all unauthorized  
5 diversion by Cal Am from the Carmel  
6 River would be unreasonable from a  
7 health and safety standpoint.

8 Can you explain to that to me? Why would that  
9 be unreasonable from a health and safety standpoint to  
10 cause the abrupt termination? What factors did you  
11 consider?

12 MR. STRETARS: What we're looking at here is,  
13 as stated in the previous sentence, says while illegal  
14 diversions should be terminated in the most direct  
15 manner, the illegal diversions at this point in time  
16 would bring a reduction in Cal Am's diversions down  
17 from about 10,978 on the average down to something on  
18 the order of about 3,730 -- 3,367 or 76 acre foot which  
19 is very extreme for a community. We're talking about a  
20 difference of about 7,000 acre feet. From that  
21 standpoint, we recognize that would be, you know, a  
22 total shock to the community and everybody else, but to  
23 legally, properly serve that community, that's what you  
24 would have to drop to. So that's the rationalization  
25 saying we basically -- abrupt termination would be

1 unreasonable.

2 MR. LAREDO: Because of the total shock?

3 MR. STRETARS: Because of the total impact to  
4 the community.

5 MR. LAREDO: I believe you continue in that  
6 paragraph that:

7 The Prosecution Team concluded that  
8 there was no practical difference  
9 between a drought and a water shortage  
10 based upon insufficient legal rights.

11 In your experience, what's the longest drought  
12 in modern times for which a community has had to impose  
13 rationing by reason of a drought?

14 MR. STRETARS: I don't think I can answer that  
15 directly. I would say three to five years, a  
16 community.

17 MR. LAREDO: If you can -- you said three to  
18 five. I certainly am aware of three-year droughts.  
19 Can you identify a four-year or five-year rationing by  
20 an established community by cause of drought?

21 MR. STRETARS: Not in the United States, no.

22 MR. LAREDO: So a three-year drought standard  
23 in modern times is a standard that make sense to you;  
24 is that correct?

25 MR. STRETARS: If you're talking about

1 drought. But we're not talking about drought; we're  
2 talking about unauthorized diversions here.

3 MR. LAREDO: And how long will it be before  
4 Cal Am ceases illegal diversions?

5 MR. STRETARS: Under what criteria?

6 MR. LAREDO: You said there's no practical  
7 difference between a drought and the circumstance where  
8 Cal Am will cease its illegal diversions. So how long  
9 are you anticipating it will be before Cal Am ceases  
10 its diversions? How long do you believe that the  
11 community will have to be under this form of water  
12 rationing?

13 MR. STRETARS: Until they can provide some  
14 form of potential alternate source of water.

15 MR. LAREDO: Do you believe that can be  
16 achieved within three years?

17 CO-HEARING OFFICER BAGGETT: Mr. Jackson?

18 MR. JACKSON: I'm going to object to this line  
19 of questioning, although it's somewhat interesting. He  
20 should specify whether he means a hundred years or  
21 50 years or 25 years before the State Board exercises  
22 its authority for the illegal diversions.

23 CO-HEARING OFFICER BAGGETT: I'm not quite  
24 sure what the objection is.

25 MR. LAREDO: I would agree that that would be

1 a wonderful question for this witness. I believe that  
2 this witness has testified there is no practical  
3 difference between the drought and --

4 CO-HEARING OFFICER BAGGETT: Okay.

5 MR. LAREDO: -- the circumstances. I want to  
6 understand did he contemplate how long rationing might  
7 have to take place.

8 MR. STRETARS: Yes, I did contemplate how long  
9 rationing might have to take place.

10 MR. LAREDO: How long?

11 MR. STRETARS: It might be forever. The  
12 community has no legal basis to be diverting water over  
13 3376, and they have exceeded that by 7,000 acre foot  
14 and continue to do so. Period.

15 MR. LAREDO: I'd like to turn your attention  
16 then to page 5. And I believe this is a portion of  
17 your testimony where you characterize the standard  
18 under which health and safety needs to be met. Are you  
19 familiar with that portion of your testimony?

20 MR. STRETARS: I believe so.

21 MR. LAREDO: I'm sorry; I couldn't hear you.

22 MR. STRETARS: I believe so.

23 MR. LAREDO: Thank you. Once again, what's  
24 the standard for domestic use that you're using?

25 MR. STRETARS: We relied on Water Code

1 Section -- Water Code regulations Section 697(b) which  
2 is an example of --

3 MR. LAREDO: Are you -- I'm not sure I got the  
4 full reference. Could you give me that?

5 MR. STRETARS: Water Code title -- Title 23,  
6 California Code Regulation 679(b), examples of amounts  
7 considered reasonably necessary for domestic use.

8 MR. LAREDO: And that amount is?

9 MR. STRETARS: 75 gallons per day per person.

10 MR. LAREDO: And that's the reasonable  
11 standard that the Prosecution Team is advocating in  
12 this proceeding?

13 MR. STRETARS: That's correct.

14 MR. LAREDO: And I'm not sure I caught your  
15 testimony. Your oral testimony made reference to Darby  
16 Fuerst. What was your reference?

17 MR. STRETARS: In Mr. Fuerst's testimony, he  
18 identified in the Phase 1 hearing that the Monterey  
19 Peninsula area was already basically operating at a  
20 level of 70 gallons per day per person, per capita.

21 MR. LAREDO: Do you have any reason to refute  
22 that?

23 MR. STRETARS: No, I don't. I think it was  
24 suggesting a little more reasonable than what you guys  
25 claim you're doing right now.

1           MR. LAREDO: So the 75 gallons per person per  
2 day, that's a residential standard; is that accurate?

3           MR. STRETARS: For the most part, yes.

4           MR. LAREDO: Help me. For the most part; that  
5 doesn't include everything. What else is included?

6           MR. STRETARS: Okay. Residential standard,  
7 yes.

8           MR. LAREDO: Are you aware of what percentage  
9 of Cal Am's distribution is to residential purposes?

10          MR. STRETARS: Somewhere in the range of 60  
11 plus percentage.

12          MR. LAREDO: That means 40 percent of that is  
13 not residential; is that correct?

14          MR. STRETARS: That's correct.

15          MR. LAREDO: I don't see in your standard that  
16 there's any water available for those nonresidential.  
17 Are you proposing those 40 percent just cease using  
18 water?

19          MR. STRETARS: The standard there, we were  
20 looking at gallon per capita based on the population of  
21 the area as a whole which is somewhat percentage  
22 relative to residents and --

23          MR. LAREDO: So you're saying -- am I to  
24 understand that commercial and industrial and all other  
25 uses are to be imbedded with those 75 gallons per

1 person per day? Is that your understanding of the  
2 Water Code regulation?

3 MR. STRETARS: I think we looked at, relative  
4 to again --

5 MR. LAREDO: I asked you what your  
6 understanding was, not what you looked at.

7 MR. STRETARS: Rephrase the question.

8 MR. LAREDO: What -- is the 75 gallons per  
9 person per day to include industrial and commercial and  
10 all other nonresidential uses?

11 MR. STRETARS: I would say to some extent,  
12 yes.

13 MR. LAREDO: To what extent?

14 MR. STRETARS: That the residential population  
15 of the area works within that community, and therefore  
16 the reliance on the -- the quantities used in the  
17 household are used at the businesses away from that  
18 spot would to some extent comply within that whole  
19 graph.

20 MR. LAREDO: Since 40 percent -- and I'm not  
21 certain I would agree that is the percentage, but we  
22 assume that -- if 40 percent is nonresidential, are you  
23 suggesting that the 75 gallons per person per day then  
24 has to be reduced by 40 percent?

25 MR. STRETARS: No.

1           MR. LAREDO: Then what portion do you reduce  
2 it by?

3           MR. STRETARS: What I'm suggesting, there are  
4 other uses out there, primarily irrigation, within that  
5 constraint, that 40 percent, that needs to be looked at  
6 seriously by -- when we start talking about health and  
7 safety aspects.

8           MR. LAREDO: Irrigation of what? Are we  
9 talking about --

10          MR. STRETARS: Irrigation of the --

11                   (Interruption by the reporter)

12          MR. LAREDO: Irrigation of what? Are we  
13 talking about irrigation around the single-family  
14 homes, or are we talking about nonresidential-related  
15 irrigation?

16          MR. STRETARS: I think we're talking about  
17 both. You have some irrigation that's maintained in  
18 each household. You also have a fairly extensive  
19 amount of irrigation that's maintained within the  
20 parks, medians and so forth throughout the city and  
21 county jurisdictions.

22          MR. LAREDO: I understand you're testifying to  
23 this. Can you point me to any guide or resource that  
24 would say that the 75 gallon per person per day  
25 standard includes these nonresidential water uses?

1 MR. STRETARS: No.

2 MR. LAREDO: So in putting together your  
3 standard, what is your recommendation as to how  
4 commercial uses should be reduced? Because I don't  
5 see --

6 MR. STRETARS: I don't agree with that. Our  
7 point was -- our point was that that's up to you as the  
8 district, you as the purveyor, to decide where you're  
9 going to have to do the pinches, how you adjust to get  
10 down to those levels.

11 We didn't require -- the option would be that  
12 you have the potential to stop all irrigation. You  
13 have the potential to place a moratorium on all new  
14 development. I know there are some developments that  
15 even though water is tight -- so you have the potential  
16 to do that.

17 But we don't suggest that. We simply say you  
18 need to get down to this level, period. Because you're  
19 illegal for anything in excess of 3376 or whatever you  
20 want to add to it now with the ASR project.

21 MR. LAREDO: If we could return to the Title  
22 23, Section 679(b) standard?

23 MR. STRETARS: Okay.

24 MR. LAREDO: Can you tell me what exactly that  
25 means to you?

1           MR. STRETARS: It provides a -- it's listed in  
2 the Water Code as being a reasonable allotment for  
3 various -- well, for domestic development, basically.

4           MR. LAREDO: Thank you.

5           I have no further questions.

6           CO-HEARING OFFICER BAGGETT: Thank you.

7           (Discussion off the record)

8           CO-HEARING OFFICER BAGGETT: Let's go back on  
9 the record and continue with City of Seaside.

10           CROSS-EXAMINATION BY MR. FIFE

11           FOR CITY OF SEASIDE

12           MR. FIFE: Good morning. I'm Michael Fife,  
13 and I'll be asking you just a couple questions on  
14 behalf of the City of Seaside.

15           Ms. Ambrosius, is it correct that your  
16 testimony was that the unauthorized diversions by Cal  
17 Am have an adverse effect on the steelhead?

18           MS. AMBROSIUS: Yes, it is.

19           MR. FIFE: And was it your further testimony  
20 that these unauthorized diversions by Cal Am have an  
21 adverse effect on the riparian corridor?

22           MS. AMBROSIUS: Yes.

23           MR. FIFE: And is the converse then true that  
24 if the unauthorized diversions by Cal Am ceased, that  
25 that would have a benefit for the steelhead?

1 MS. AMBROSIUS: Yes.

2 MR. FIFE: And similarly, if the unauthorized  
3 diversions ceased, that would have a benefit on  
4 riparian corridor?

5 MS. AMBROSIUS: Yes.

6 MR. FIFE: Similarly, you testified that if  
7 the time period in which the diversions were required  
8 emphasized a certain time of the year, that that would  
9 have more of a benefit for the fish than if it did not;  
10 is that correct?

11 MS. AMBROSIUS: Yes.

12 MR. FIFE: For any of these benefits, is there  
13 any part of your testimony that provides a  
14 quantification of how much these benefits to either the  
15 steelhead or the riparian corridor might be, such that,  
16 for example, if the Board were to require that the  
17 benefits emphasized those specific times that you  
18 mentioned in your testimony, the benefit would be X,  
19 and if they did not, it would be X minus Y. Do you  
20 provide that quantification?

21 MS. AMBROSIUS: I do not. And it's really  
22 based on a lot of other factors determining the type of  
23 water year and when the rainfall occurs during the  
24 year.

25 MR. FIFE: And similarly then with regard to

1 the diversions themselves, is there anything in your  
2 testimony that provides quantification to either the  
3 fish or the riparian corridors or the Public Trust  
4 Resources, is there anything in your testimony that  
5 provides a quantification that any increment of the  
6 required reductions in unauthorized diversion would  
7 have a greater benefit than not?

8 For example, under the proposed cease and  
9 desist order, the first year Cal Am would be required  
10 to reduce their diversions by 15 percent. Is there  
11 anything in your testimony that would say that has a  
12 greater quantifiable benefit than say if they were  
13 required to reduce their diversions by 14 1/2 percent?

14 MS. AMBROSIUS: I do not explicitly get to  
15 that.

16 MR. FIFE: Mr. Stretars, I'd like to turn to  
17 your written testimony.

18 On page 4 of your written testimony, you  
19 articulate the different factors that went into your  
20 recommendation of the different percentage reductions  
21 in the draft cease and desist order; is that correct?

22 MR. STRETARS: Yes.

23 MR. FIFE: And if I can attempt to just  
24 broadly paraphrase your testimony, you looked at the  
25 Monterey Peninsula Water Management District's drought

1 schedules, different statements by Cal Am and others  
2 about what they are able to achieve under their  
3 different conservation programs, et cetera, and then  
4 various health and safety issues. Is that correct?

5 MR. STRETARS: That's correct.

6 MR. FIFE: And is there anything in your  
7 testimony that bases the percentage reductions on some  
8 kind of quantifiable benefit to the Public Trust  
9 resources?

10 MR. STRETARS: No, there is not. We're not  
11 looking at the standpoint, necessarily, of quantifiable  
12 relative to the Public Trust. Looking at from the  
13 standpoint of unauthorized diversions.

14 MR. FIFE: Thank you.

15 No further questions.

16 CO-HEARING OFFICER BAGGETT: Thank you. And  
17 Seaside Basin Watermaster, no cross? None of the  
18 cities have cross?

19 Monterey Peninsula Hospitality Association?  
20 Let's try to do this before lunch. Monterey County  
21 Hospitality Association.

22 CROSS-EXAMINATION BY MR. LOWREY

23 FOR MONTEREY COUNTY HOSPITALITY ASSOCIATION

24 MR. LOWREY: Lloyd Lowrey of Noland Hamerly  
25 for Monterey County Hospitality Association.

1           Mr. Stretars, turning your attention to again  
2 to the discussion of the standard for reduction -- that  
3 you used for reduction. Is it correct to state that  
4 did not include any health and safety impacts from the  
5 decreased economic or financial resources that the  
6 cities and other jurisdictions might have as a result  
7 of the decreased economic activity?

8           MR. JACKSON: Mr. Baggett, I'm going to object  
9 to that question.

10           First of all, there's been no connection  
11 between health and safety and decreased economic  
12 activity. It seems to me that this is an argument that  
13 is completely unrelated to health and safety.

14           CO-HEARING OFFICER BAGGETT: I would sustain,  
15 but if you could rephrase the question more  
16 specifically. It's almost compound. Rephrase the  
17 question. I think it is relevant to understand these  
18 relationships. Just rephrase it; break it down.

19           MR. LOWREY: Thank you.

20           Mr. Stretars, in looking at health and safety  
21 impacts, did you consider specific health and safety  
22 impacts? Let me give you an example. Did you consider  
23 the police, any impacts on police activity?

24           MR. STRETARS: I don't following connecting  
25 that to water, frankly.

1 MR. LOWREY: And did you --

2 MR. STRETARS: Or health and safety.

3 MR. LOWREY: So I take it the answer is no?

4 MR. STRETARS: No.

5 MR. LOWREY: Did you consider any possible  
6 impacts on fire protection?

7 MR. STRETARS: Yes, I did.

8 MR. LOWREY: And what were those impacts that  
9 you considered?

10 MR. STRETARS: We considered the need to have  
11 water available to take care of a fire.

12 MR. LOWREY: So the only impacts that you  
13 considered specifically were those in which the amount  
14 of water would be reduced?

15 MR. STRETARS: I'd say yes.

16 MR. LOWREY: Thank you.

17 That's all I have.

18 CO-HEARING OFFICER BAGGETT: Let's go off the  
19 record a minute.

20 (Discussion off the record)

21 CO-HEARING OFFICER BAGGETT: Back on the  
22 record. We'll take our lunch recess. It's 12:00;  
23 we'll come back by 1:00.

24 (Lunch recess)

25



1                   CROSS-EXAMINATION BY MR. RUBIN  
2                   FOR CALIFORNIA AMERICAN WATER COMPANY  
3                   MR. RUBIN: Good afternoon. My name is Jon  
4 Rubin. I'm an attorney representing California  
5 American Water. Ms. Ambrosius, I have some questions  
6 first for you. You are a fishery biologist, correct?

7                   MS. AMBROSIUS: Yes.

8                   MR. RUBIN: You are not a hydrologist?

9                   MS. AMBROSIUS: No, I'm not.

10                  MR. RUBIN: And you're not an engineer?

11                  MS. AMBROSIUS: No, I'm not.

12                  MR. RUBIN: Ms. Ambrosius, is there a  
13 difference between the take of a species and the effect  
14 that take has on abundance of a species?

15                  MS. AMBROSIUS: Well, take is a term defined  
16 in the Endangered Species Act. And -- I'm sorry; what  
17 was the second part?

18                  MR. RUBIN: Abundance.

19                  MS. AMBROSIUS: The abundance deals with  
20 probably the population numbers.

21                  MR. RUBIN: So you could have a circumstance  
22 where you're taking a species but not affecting the  
23 abundance of the species?

24                  MS. AMBROSIUS: Well, taking of a species  
25 would affect the abundance of the species in that it is

1 potentially killing that individual.

2 MR. RUBIN: And the effect on abundance is for  
3 that year's population; it might not necessarily affect  
4 the abundance of the species in a subsequent year?

5 MS. AMBROSIUS: It could. Yes, it could.

6 MR. RUBIN: It could, but it doesn't  
7 necessarily affect the population; is that correct?

8 MS. AMBROSIUS: It affects the population in  
9 that that one individual would be killed and it can no  
10 longer grow and reproduce in the future years.

11 MR. RUBIN: Okay. I'll state my question a  
12 little bit differently.

13 How many juveniles are produced by a single  
14 steelhead?

15 MS. AMBROSIUS: That could vary, in the tens  
16 of thousands.

17 MR. RUBIN: And out of that tens of thousands  
18 of juveniles that are produced by a single species -- a  
19 single steelhead, how many of those survive to  
20 adulthood?

21 MS. AMBROSIUS: That really depends on  
22 different conditions, but we usually take about a two  
23 percent survival rate.

24 MR. RUBIN: So it's possible there is a factor  
25 out there, say predation, that's taking a juvenile but

1 doesn't necessarily affect the abundance of the species  
2 in subsequent years?

3 MS. AMBROSIUS: I'm not quite sure what you're  
4 getting at, abundance. I mean it would be because of  
5 the death of that one, could no longer grow and  
6 reproduce.

7 MR. RUBIN: According to your testimony, only  
8 two percent of juveniles, approximately two percent of  
9 juveniles, mature to adulthood. Therefore presumably  
10 98 percent are killed by a number of different factors  
11 that are affecting the species?

12 MS. AMBROSIUS: Yes.

13 MR. RUBIN: Ms. Ambrosius, when were you first  
14 contacted by a member of the State Water Resources  
15 Control Board staff regarding possible issuance of the  
16 draft cease and desist order against California  
17 American Water?

18 MS. AMBROSIUS: I don't recall the exact date.

19 MR. RUBIN: Do you recall if you were  
20 contacted by a staff member from the State Water  
21 Resources Control Board before January 15, 1998 --  
22 excuse me -- 2008?

23 MS. AMBROSIUS: I don't recall.

24 MR. RUBIN: Do you recall if you were  
25 contacted by somebody from the -- excuse me; strike

1 that.

2 Do you recall if you were contacted by a staff  
3 person from the State Water Resources Control Board  
4 prior to February 4th, 2008?

5 MS. AMBROSIUS: I really don't recall what  
6 date it was.

7 MR. RUBIN: Do you recall being contacted by a  
8 staff person at the State Water Resources Control Board  
9 at some time?

10 MS. AMBROSIUS: Yes.

11 MR. RUBIN: At the time that you were  
12 contacted by the staff person, do you recall what, if  
13 anything, you were asked to testify on?

14 MS. AMBROSIUS: They asked if I could be an  
15 expert witness for the State Board.

16 MR. RUBIN: Did the staff person or persons  
17 provide you with questions that they would like you to  
18 respond to?

19 MS. AMBROSIUS: No.

20 MR. RUBIN: Did they provide you the general  
21 subject matter on which they would like for you to  
22 testify?

23 MS. AMBROSIUS: They wanted me to testify on  
24 the fisheries of the Carmel River.

25 MR. RUBIN: Has NOAA Fisheries -- by that,

1 National Marine Fisheries Service -- analyzed if there  
2 is a legal basis for the State Water Resources Control  
3 Board to issue a cease and desist order against  
4 California American Water?

5 MS. AMBROSIUS: Would you repeat that?

6 MR. RUBIN: Has NOAA Fisheries analyzed if  
7 there is a legal basis for the State Water Resources  
8 Control Board to issue a cease and desist order against  
9 California American Water?

10 MR. SATO: Objection; lack of foundation.  
11 Assumes facts not in evidence.

12 CO-HEARING OFFICER BAGGETT: Sustained.

13 CO-HEARING OFFICER WOLFF: Can you speak a  
14 little louder? It's hard for me to hear.

15 MR. RUBIN: Ms. Ambrosius, do you know if the  
16 population of steelhead in the Carmel River declined in  
17 the period beginning in the mid 1960s to the late  
18 1970s?

19 MS. AMBROSIUS: We do have some data that does  
20 show that -- the data that we do have shows that it has  
21 declined.

22 MR. RUBIN: And specifically during the period  
23 starting in the mid 1960s to the late 1970s?

24 MS. AMBROSIUS: That is some of the data that  
25 we have.

1           MR. RUBIN: Ms. Ambrosius, would you consider  
2 the decline that occurred during that period to be  
3 significant?

4           MS. AMBROSIUS: Yes.

5           MR. RUBIN: Ms. Ambrosius, if you saw a  
6 population increase from the level seen in the late  
7 1970s to the level seen in the mid 1960s over the same  
8 period of time, would you characterize the increase as  
9 significant?

10          MS. AMBROSIUS: Yes.

11          MR. RUBIN: On page 3 of your written  
12 testimony, PT-39, you state:

13                 Blocked access to historic spawning and  
14                 rearing areas upstream of dams and water  
15                 diversions have contributed to the  
16                 decline of the south-central California  
17                 coast steelhead.

18                 Do you see that?

19          MS. AMBROSIUS: Is that under paragraph six?

20                 Yes, I see it.

21          MR. RUBIN: To support your statement, you  
22 cite PT-40, the recovery outline for the distinct  
23 population segment; is that correct?

24          MS. AMBROSIUS: Yes.

25          MR. RUBIN: And PT-40, the recovery outline,

1 identifies numerous factors affecting the south-central  
2 California coast steelhead; is that correct?

3 MS. AMBROSIUS: Yes.

4 MR. RUBIN: Those factors include alteration  
5 of natural stream flow patterns, loss of habitat,  
6 climate change, recreational fishing, ocean conditions,  
7 predation, development, physical impediments to fish  
8 passage, alteration of floodplains and channels,  
9 sedimentation, urban and rural waste discharge, spread  
10 and propagation of exotic species; is that correct?

11 MR. SATO: Objection; the document speaks for  
12 itself.

13 CO-HEARING OFFICER BAGGETT: Overruled. You  
14 can answer the question.

15 MS. AMBROSIUS: Yeah, I can look at the  
16 document.

17 MR. RUBIN: Ms. Ambrosius, do you have a copy  
18 of PT-40?

19 MS. AMBROSIUS: Yes, I do. Do you know what  
20 page that was that you were referring to?

21 MR. RUBIN: I believe on page 20 there is a  
22 list of some of the factors. Ms. Ambrosius, for the  
23 record maybe it would be worthwhile for you to  
24 articulate what has been identified.

25 MS. AMBROSIUS: In this report?

1 MR. RUBIN: Yes.

2 MS. AMBROSIUS: You would like me to read  
3 this?

4 MR. RUBIN: Just the -- well, I'll forego the  
5 question. I think the document does speak for itself.

6 CO-HEARING OFFICER BAGGETT: Thank you.

7 MR. RUBIN: In your testimony, PT-39, you  
8 discuss an action to list the south-central California  
9 coast steelhead Distinct Population Segment as a  
10 federally listed threatened species; is that correct?

11 MS. AMBROSIUS: Yes.

12 MR. RUBIN: NOAA Fisheries took that action  
13 initially on August 18, 1997; is that correct?

14 MS. AMBROSIUS: Yes.

15 MR. RUBIN: The action to list the  
16 south-central California coast steelhead is reflected  
17 in the Federal Register; is that correct?

18 MS. AMBROSIUS: Yes.

19 MR. RUBIN: The Federal Register presents a  
20 final rule which in part concludes the south-central  
21 California coast steelhead was a threatened species?

22 MS. AMBROSIUS: Yes.

23 MR. RUBIN: The south-central California coast  
24 steelhead was originally proposed to be listed as  
25 endangered?

1           MS. AMBROSIUS: At one time, I think that's  
2 what they had requested.

3           MR. RUBIN: In the Federal Register, NOAA  
4 Fisheries explains its decision to list the  
5 south-central California coast steelhead as threatened  
6 rather than endangered because of more optimistic  
7 assessments on abundance data; is that correct?

8           MS. AMBROSIUS: Yes.

9           MR. RUBIN: In its final rule listing the  
10 south-central California coast steelhead, NOAA  
11 Fisheries recognized that updated data on abundance and  
12 trends for steelhead in the south-central California  
13 coast steelhead indicate increases in recent years; is  
14 that correct?

15          MR. SATO: Once again, I'll make the same  
16 objection, simply because he's citing the Federal  
17 Register so the document must speak for itself as well.  
18 I mean, either Mr. Rubin must have a question -- if  
19 he's simply going to have her acknowledge that the  
20 Federal Register exists and ask for information.

21          CO-HEARING OFFICER BAGGETT: Where are you  
22 headed with this?

23          MR. RUBIN: I'm just trying to get an  
24 understanding of NOAA Fisheries' position on the state  
25 of the fisheries which I think is critical to the

1 consideration the State Water Resources Control Board  
2 will give to whether a remedy is appropriate in this  
3 case. Ms. Ambrosius --

4 CO-HEARING OFFICER BAGGETT: It is relevant,  
5 but could you, I guess, get there quicker? I  
6 understand you're laying a foundation, but could you  
7 move along toward the direct questions? That would be  
8 appreciated.

9 MR. RUBIN: Ms. Ambrosius, I'm going to ask my  
10 assistant to provide you with a copy of the Federal  
11 Register, a section of the Federal Register marked as  
12 62 Federal Register 43949.

13 Is what the section -- excuse me. It's  
14 Federal Register -- excuse me; strike that -- 62  
15 Federal Register 43949, the section of the Federal  
16 Register that contains NOAA Fisheries' final rule  
17 listing the south-central California steelhead as a  
18 threatened species?

19 MS. AMBROSIUS: Looks like it starts on 48 and  
20 goes on to 49.

21 MR. RUBIN: Thank you.

22 I would like to have the Federal Register  
23 marked as an exhibit. I believe the next in order for  
24 California American Water is CAW-38.

25 CO-HEARING OFFICER BAGGETT: All right.

1           (Exhibit CAW-38 was marked for  
2           identification.)

3           MR. RUBIN: Ms. Ambrosius, in your written  
4           testimony, PT-39, you also reflect that NOAA Fisheries  
5           reasserted its decision to list the south-central  
6           California coast steelhead as a threatened species on  
7           February -- excuse me -- January 5, 2006; is that  
8           correct?

9           MS. AMBROSIUS: Yes.

10          MR. RUBIN: Again, the action to reassert the  
11          status of the south-central California coast steelhead  
12          as threatened was reflected in the Federal Register?

13          MS. AMBROSIUS: Yes.

14          MR. RUBIN: At that time, NOAA Fisheries  
15          maintained the status of the south-central California  
16          coast steelhead as threatened?

17          MS. AMBROSIUS: Yes.

18          MR. RUBIN: In your written testimony, PT-39,  
19          you note an estimate of 20,000 adult steelhead in the  
20          Carmel River in 1928; is that correct?

21          MS. AMBROSIUS: Yes.

22          MR. RUBIN: To support your estimate, you cite  
23          the California Advisory Committee?

24          MS. AMBROSIUS: The California Advisory  
25          Committee on Salmon and Steelhead.

1           MR. RUBIN: Are you aware that the California  
2 Advisory Committee on Salmon and Steelhead also  
3 estimated the 1988 adult steelhead population to be  
4 approximately 2,000?

5           MS. AMBROSIUS: No, I'm not.

6           MR. RUBIN: Are you aware of the West Coast  
7 Salmon Biological Review Team?

8           MS. AMBROSIUS: I'm aware of it, yes.

9           MR. RUBIN: Can you provide a brief  
10 explanation of what is the West Coast Salmon Biological  
11 Review Team?

12           MS. AMBROSIUS: I'm assuming you're referring  
13 to the NOAA biological review team?

14           MR. RUBIN: Yes.

15           MS. AMBROSIUS: It's a review team that was  
16 put together to look at the status of the steelhead and  
17 the different salmon species in California.

18           MR. RUBIN: And what time frame was the West  
19 Coast Salmon Biological Review Team brought together by  
20 NOAA Fisheries?

21           MS. AMBROSIUS: I am not sure on that. They  
22 have been brought together to review the status of  
23 2005, and I'm not sure if they were brought together  
24 earlier.

25           MR. RUBIN: Does NOAA Fisheries hold in high

1 regard the opinions of the West Coast Salmon Biological  
2 Review Team?

3 MS. AMBROSIUS: I don't know if I can answer  
4 that.

5 MR. RUBIN: Who comprises the West Coast  
6 Salmon Biological Review Team?

7 MS. AMBROSIUS: I don't know all of the  
8 members, but our Santa Cruz lab leads it.

9 MR. RUBIN: Let me ask my question a little  
10 bit more generally, because I wasn't looking for a  
11 specific answer. Is the West Coast Salmon Biological  
12 Review Team comprised of biologists?

13 MS. AMBROSIUS: Yes.

14 MR. RUBIN: Who chooses the members of the  
15 West Coast Salmon Biological Review Team?

16 MS. AMBROSIUS: I'm not sure how they were  
17 chosen.

18 MR. RUBIN: PT-40, the recovery outline for  
19 the south-central California coast steelhead, relies  
20 upon findings by the West Coast Salmon Biological  
21 Review Team; is that correct?

22 MS. AMBROSIUS: Yes.

23 MR. RUBIN: Has the West Coast Salmon  
24 Biological Review Team prepared a document entitled  
25 Updated Status of Federally Listed ESUs of the West

1 Coast Salmon and Steelhead?

2 MS. AMBROSIUS: I believe that's what it is.

3 MR. RUBIN: Do you recall when the West Coast  
4 Salmon Biological Review Team prepared the document?

5 MS. AMBROSIUS: I am not, but I think that  
6 refers to the 2005 updated status.

7 MR. RUBIN: I'll ask my associate, Valerie  
8 Kincaid, to provide you with a copy of a document that  
9 is entitled Updated Status of Federally Listed ESUs of  
10 West Coast Salmon and Steelhead which is dated  
11 July 2003.

12 What Ms. Kincaid is providing to you is a  
13 document that includes the index and a section that is  
14 numbered or lettered B28 south-central California  
15 steelhead. Do you recognize that document?

16 MS. AMBROSIUS: Do I recognize it? I don't  
17 know if I've seen this one.

18 CO-HEARING OFFICER WOLFF: Ms. Ambrosius,  
19 could you speak up? Could you speak louder please?  
20 That's me speaking.

21 MS. AMBROSIUS: I couldn't see you.

22 CO-HEARING OFFICER WOLFF: That's fine. I'm  
23 having a hard time hearing you.

24 MR. SATO: Let me just raise an objection,  
25 having looked at this document for the very first time.

1 It appears it is simply a partial document. Is that  
2 correct, Mr. Rubin?

3 MR. RUBIN: Yes.

4 I have provided as part of the document the  
5 table of contents and the section that I thought was  
6 relevant to this proceeding.

7 MR. SATO: I just wanted to make sure for the  
8 record that we wouldn't assume this was the complete  
9 document if that's so.

10 MR. RUBIN: No.

11 CO-HEARING OFFICER BAGGETT: Okay. It's  
12 understood it is the table of contents and relevant  
13 portion of the document -- which, by the way, we don't  
14 have copies of.

15 Well, there's one for the record, so I guess  
16 we can share the other one.

17 MR. RUBIN: I would like the document to be  
18 marked as Exhibit CAW-39.

19 (Exhibit CAW-39 was marked for  
20 identification.)

21 MR. RUBIN: Ms. Ambrosius, I'm sorry; I might  
22 have missed your answer. Are you familiar with the  
23 updated status of federally listed ESUs of west coast  
24 salmon and steelhead?

25 MS. AMBROSIUS: I don't know if I've seen this

1 one, this actual report.

2 MR. RUBIN: So you are not aware of the  
3 conclusion by the West Coast Salmon Biological Review  
4 Team that the California Advisory Committee's estimate  
5 of 2,000 adult salmon in 2008 is unsupported by  
6 evidence?

7 MS. AMBROSIUS: No, I'm not.

8 MR. SATO: Let me object first to the question  
9 because I think it's just testimony by Mr. Rubin. The  
10 document says what it says. But his characterization,  
11 he can't testify that way, and so he can't somehow get  
12 it into evidence.

13 CO-HEARING OFFICER BAGGETT: Sustained. Would  
14 you rephrase? Sustained. I mean, if you're going to  
15 summarize the document --

16 MR. RUBIN: I apologize, but I -- the question  
17 that I asked was if she was -- is she unaware of the  
18 findings, the conclusion. I believe she answered, she  
19 said no.

20 CO-HEARING OFFICER BAGGETT: Just leave the  
21 conclusion, but I think the objection was that you  
22 summarized the conclusion, you're aware of the  
23 conclusion, and you said no. That's fine. I think the  
24 objection was, as I understood it, your  
25 characterization of the conclusion.

1 MR. SATO: That's correct.

2 MR. SILVER: And that's Sierra Club's  
3 conclusion --

4 CO-HEARING OFFICER BAGGETT: So I will sustain  
5 the objection. Re-ask the question.

6 MR. RUBIN: All right.

7 MR. SATO: I mean she's indicated she's not  
8 necessarily familiar with this document, so if there's  
9 any conclusion that you --

10 (Interruption by the reporter)

11 MR. SATO: If she's not aware of, I mean,  
12 aware of this document.

13 CO-HEARING OFFICER WOLFF: You're all speaking  
14 too softly. I appreciate the civility, but you must  
15 speak up.

16 MR. SATO: Thank you.

17 CO-HEARING OFFICER BAGGETT: Moving along,  
18 Mr. Rubin, ask the next question.

19 MR. RUBIN: Ms. Ambrosius, I ask you to turn  
20 to page 110 of the document Updated Status of Federally  
21 Listed ESUs of West Coast Salmon and Steelhead dated  
22 July 2003 which has been marked Exhibit California  
23 American Water 39.

24 MS. AMBROSIUS: I have that page.

25 MR. RUBIN: Do you see page 110 of California

1 American Water 39, a statement that says:

2 CACCS suggested an annual run size of  
3 20,000 adults in the Carmel River.

4 MS. AMBROSIUS: Yes.

5 MR. RUBIN: Do you see the statement that  
6 continues that sentence where it indicates that:

7 But gave no supporting evidence for the  
8 estimate.

9 MS. AMBROSIUS: Yes.

10 MR. RUBIN: Were you aware of that statement  
11 prior to today?

12 MS. AMBROSIUS: No.

13 MR. RUBIN: Ms. Ambrosius, page 14 of Exhibit  
14 PT-40 includes a statement regarding an updated status  
15 review completed by the BRT in 2005. Do you see that  
16 statement?

17 MS. AMBROSIUS: I'm sorry, but I don't know  
18 what PT-40 is.

19 MR. RUBIN: I'm sorry. PT-40 is a document  
20 that is submitted by the Prosecution Team entitled 2007  
21 Federal Recovery Outline.

22 MS. AMBROSIUS: Okay.

23 MR. RUBIN: Ask you to refer to page 14. The  
24 last complete paragraph on the page references an  
25 updated status review completed by the BRT.

1 MS. AMBROSIUS: Yes.

2 MR. RUBIN: Is the BRT the biological review  
3 team?

4 MS. AMBROSIUS: Yes.

5 MR. RUBIN: And in the document there's a  
6 reference to three new significant pieces of  
7 information that have been developed. Do you see that?

8 MS. AMBROSIUS: Yes.

9 MR. RUBIN: One of the pieces of information  
10 is updated time series data for adult steelhead counts.  
11 Do you see that?

12 MS. AMBROSIUS: Yes.

13 MR. RUBIN: Are you aware that the biological  
14 review team concluded that since 1996 the abundance of  
15 adult spawners in the Carmel River have improved?

16 MS. AMBROSIUS: They said it has increased.  
17 The numbers have increased.

18 MR. RUBIN: Thank you.

19 Was it the opinion -- excuse me. Do you know  
20 if it was the opinion of the West Coast Salmon  
21 Biological Review Team that data from 1988 to 2002  
22 showed a rapid improvement in abundance?

23 MS. AMBROSIUS: I'm not aware of that.

24 MR. RUBIN: Ms. Ambrosius, Ms. Kincaid will  
25 now be handing to you a figure which I ask that be

1 marked as Exhibit CAW 40.

2 (Exhibit CAW-40 was marked for  
3 identification.)

4 MR. RUBIN: I believe Exhibit CAW-40 is a  
5 figure from document CAW-39 which is the Updated Status  
6 of Federally Listed ESUs of West Coast Salmon and  
7 Steelhead. Ms. Ambrosius, does the figure marked  
8 Exhibit CAW-40 show two separate regressions, linear  
9 regressions.

10 MS. AMBROSIUS: Yes, it does.

11 MR. RUBIN: Linear regressions are forms of  
12 regression analyses in which data are modelled; is that  
13 correct?

14 MS. AMBROSIUS: As far as I'm aware.

15 MR. RUBIN: Linear regressions are common  
16 analytical tools used by biologists to better  
17 understand data?

18 MS. AMBROSIUS: They can be.

19 MR. RUBIN: In Exhibit CAW-40, the West Coast  
20 Salmon Biological Review Team presents a linear  
21 regression which shows a decline in the number of  
22 adults over a period from the mid 1960s to the late  
23 1970s; is that correct?

24 MS. AMBROSIUS: Yes.

25 MR. RUBIN: In Exhibit CAW-40, the West Coast

1 Salmon Biological Review Team also presents a linear  
2 regression which shows improvement in number of adults  
3 over a period from the late 1980s to early 2000s?

4 MS. AMBROSIUS: Yes.

5 MR. RUBIN: Based on the linear regressions  
6 presented in Exhibit CAW-40, the rate of steelhead  
7 decline represented by the linear regression line for  
8 the period from the mid 1960s to the late 1970s is  
9 slower than the rate of improvement represented by the  
10 linear regression line for the period from the late  
11 1980s to the early 2000s?

12 MR. SILVER: I object to the question. It's  
13 imprecise. I don't know what is meant by early 2000s.  
14 The chart currently, I think, shows that it terminates  
15 after 2002 and does not include more recent data. I'm  
16 just asking the question be precise so we understand  
17 what is meant when Mr. Rubin refers to early 2000s.

18 CO-HEARING OFFICER BAGGETT: Very good. Could  
19 you be more specific.

20 MR. RUBIN: Sure.

21 Ms. Ambrosius, the data that's present for the  
22 period -- excuse me. There's two regression lines  
23 again on figure -- excuse me; strike that. Let me  
24 start again.

25 There's two regression lines presented on

1 California American Water 40; is that correct?

2 MS. AMBROSIUS: Yes.

3 MR. RUBIN: Can you provide me an estimate of  
4 the data that are plotted relative to the regression  
5 line on the right side of the figure?

6 MS. AMBROSIUS: I don't quite understand what  
7 you are asking. These are adult counts from San  
8 Clemente Dam.

9 MR. RUBIN: And the adult counts from San  
10 Clemente Dam are for a period of time; is that correct?

11 MS. AMBROSIUS: Yes.

12 MR. RUBIN: And there's a regression line that  
13 is developed based upon data over a period of time and  
14 is reflected on the right side of California American  
15 Water 40; is that correct?

16 MS. AMBROSIUS: Yes.

17 MR. RUBIN: What years do those data on the  
18 number of adults represent?

19 MS. AMBROSIUS: It's a little hard to tell.  
20 It looks like maybe from 1987 through 2002?

21 MR. RUBIN: Thank you.

22 And the data that's presented on the left side  
23 of California American Water 40 are provided based upon  
24 what year range?

25 MS. AMBROSIUS: It looks from about 1963 to

1 '78.

2 MR. RUBIN: Thank you.

3 Based upon the linear regression represented  
4 in Exhibit CAW-40, the rate of steelhead decline  
5 represented the linear regression line for the periods  
6 from approximately 1963 to 1978 is slower than the rate  
7 of improvement represented by the linear regression  
8 line for the periods from approximately 1982 through  
9 2002?

10 MS. AMBROSIUS: The rate is slower, yes; the  
11 population numbers are not.

12 MR. RUBIN: Thank you.

13 MR. SATO: I'm sorry; could I have the  
14 response read back?

15 (Record read)

16 MS. AMBROSIUS: The population numbers are  
17 lower than, in the later years, than in the earlier  
18 years.

19 CO-HEARING OFFICER BAGGETT: This is  
20 Mr. Rubin's chance for cross-examination, so.

21 MR. RUBIN: Maybe it's best to -- because of  
22 the dialogue -- for the court reporter to read back the  
23 question. I'm not sure the answer was responsive to  
24 the question.

25 (Record read)

1           MR. RUBIN: Ms. Ambrosius, are you familiar  
2 with the fisheries and management that has occurred  
3 within the Carmel River Basin during the late 1980s  
4 through the early 2000s?

5           MS. AMBROSIUS: Specific fisheries management  
6 or with Cal Am or with Monterey Peninsula?

7           MR. RUBIN: Generally?

8           MS. AMBROSIUS: Yes.

9           MR. RUBIN: Fisheries management occurring  
10 within the Carmel River Basin during the period  
11 includes oversight by the State Water Resources Control  
12 Board?

13          MS. AMBROSIUS: It includes the Order 95-10,  
14 yes.

15          MR. RUBIN: Fisheries management occurring  
16 within the Carmel River Basin during the period also  
17 included oversight by NOAA Fisheries?

18          MS. AMBROSIUS: Only after 1997 when the fish  
19 were listed.

20          MR. RUBIN: So from the period of 1997 through  
21 the present, NOAA Fisheries has overseen activities  
22 within the Carmel River Basin?

23          MS. AMBROSIUS: Yes.

24          MR. RUBIN: Fisheries management occurring  
25 within the Carmel River Basin also includes oversight

1 by the California Department of Fish and Game?

2 MS. AMBROSIUS: Yes.

3 MR. RUBIN: And does the United States Fish  
4 and Wildlife Service provide some level of oversight on  
5 activities within the Carmel River Basin during that  
6 same period?

7 MS. AMBROSIUS: Yes.

8 MR. RUBIN: Ms. Ambrosius, you note on page 4  
9 of your written testimony which has been marked as  
10 PT-39 a Memorandum of Agreement executed annually  
11 between the Monterey Peninsula Water Management  
12 District, California American Water, and the Department  
13 of Fish and Game?

14 MS. AMBROSIUS: Yes.

15 MR. RUBIN: And I believe you state that the  
16 agreement is intended quote to keep as much stream  
17 channel -- excuse me; let me make sure this is correct.

18 You state in your written testimony which has  
19 been marked as PT-39 that the agreement is to keep as  
20 much stream channel wetted below SCD as possible during  
21 a low flow season; is that correct?

22 MS. AMBROSIUS: Yes, that's part of the  
23 sentence.

24 MR. RUBIN: And SCD is San Clemente Dam?

25 MS. AMBROSIUS: Yes.

1 MR. RUBIN: Do you know how many years the  
2 Department of Fish and Game has executed the MOA?

3 MS. AMBROSIUS: No, I don't.

4 MR. RUBIN: Do you know if the Department of  
5 Fish and Game has executed an MOA with the Monterey  
6 Peninsula Water Management District and California  
7 American Water this year?

8 MS. AMBROSIUS: Yes, and I -- I'm not  
9 completely sure, but I think it might be completed.

10 MR. RUBIN: Do you know if Department of Fish  
11 and Game executed an agreement -- excuse me -- a  
12 Memorandum of Agreement with the Monterey Peninsula  
13 Water Management District and California American Water  
14 last year?

15 MS. AMBROSIUS: Yes.

16 MR. RUBIN: Ms. Ambrosius, are you aware of  
17 meetings held by the Monterey Peninsula Water  
18 Management District during which a quarterly water  
19 budget is developed for California American Water?

20 MS. AMBROSIUS: Yes.

21 MR. RUBIN: Is NOAA Fisheries represented  
22 during the quarterly water budget meetings?

23 MS. AMBROSIUS: Yes.

24 MR. RUBIN: Do you know if Monterey Peninsula  
25 Water Management District develops a quarterly water

1 budget assuming California American Water can extract  
2 up to 11,285 acre feet of water from the Carmel River?

3 MS. AMBROSIUS: Yes.

4 MR. RUBIN: Does the Monterey Peninsula Water  
5 Management District adopt quarterly water budgets  
6 during official meetings of its Board of Directors?

7 MS. AMBROSIUS: I think that's the case.

8 MR. RUBIN: Do you know if NOAA Fisheries has  
9 ever filed with the Monterey Peninsula Water Management  
10 District Board of Directors comments on a quarterly  
11 water budget?

12 MS. AMBROSIUS: No, we sit in on the earlier  
13 meetings that come to the conclusions, and then they  
14 take it to the Board.

15 MR. RUBIN: Thank you.

16 Now Ms. Ambrosius, in your written testimony  
17 on page 4 which has been marked -- testimony has been  
18 marked PT-39, you note that California American Water  
19 is responsible for approximately 85 percent of the  
20 total water extracted from the Carmel River system.

21 MS. AMBROSIUS: Yes.

22 MR. RUBIN: Is that correct?

23 MS. AMBROSIUS: Yes.

24 MR. RUBIN: For that statement, do you rely on  
25 PT-45, a document entitled Instream Flow Needs for

1 Steelhead in the Carmel River?

2 MS. AMBROSIUS: Yes.

3 MR. RUBIN: PT-45 is a document prepared by  
4 NOAA Fisheries?

5 MS. AMBROSIUS: Yes.

6 MR. RUBIN: PT-45 concerns instream flows if  
7 an offstream storage project is developed; is that  
8 correct?

9 MS. AMBROSIUS: It is about instream flow  
10 needs for steelhead.

11 MR. RUBIN: Ms. Ambrosius, I ask that you take  
12 a look at PT-45, a document that's entitled Instream  
13 Flow Needs for Steelhead in the Carmel River. Do you  
14 have a copy of that before you?

15 MS. AMBROSIUS: Yes, I do.

16 MR. RUBIN: Ms. Ambrosius, I ask that you turn  
17 to page 2, the second complete paragraph. Does the  
18 document state:

19 To develop a significant offstream  
20 storage project from the Carmel River  
21 waters, it is necessity to identify the  
22 instream flows needed to protect aquatic  
23 resources in that river?

24 MS. AMBROSIUS: Yes.

25 MR. RUBIN: Thank you.

1           Getting back to your statement on page 4  
2 related to the percent use of water by California  
3 American Water, do you rely upon information provided  
4 on page 1 of PT-45?

5           MS. AMBROSIUS: Yes.

6           MR. RUBIN: The information provided on page 1  
7 of PT-45 is supported by a citation to the Monterey  
8 Peninsula Water Management District water production  
9 summaries for the period July 1, 1998 through  
10 June 30th, 2000; is that correct?

11          MS. AMBROSIUS: Yes.

12          MR. RUBIN: Do you know if the extractions of  
13 Carmel River water by persons or entities other than  
14 California American Water have changed since the 1998  
15 through 2000 period?

16          MS. AMBROSIUS: No, I do not.

17          MR. RUBIN: So it's possible that extractions  
18 by persons or entities other than California American  
19 Water have increased since the 1998 through 2000  
20 period?

21          MR. MOELLER: Objection; that calls for  
22 speculation.

23          CO-HEARING OFFICER BAGGETT: Sustained.  
24 Rephrase.

25          MR. RUBIN: Could extractions by persons or

1 entities other than California American Water increase  
2 since the 1998 through 2000 period?

3 MR. MOELLER: Objection; same ground.

4 MR. RUBIN: Asking for her opinion whether  
5 they could or they couldn't.

6 CO-HEARING OFFICER BAGGETT: Overruled. Could  
7 the witness please answer.

8 MS. AMBROSIUS: Yes, they could.

9 MR. RUBIN: If extractions by California  
10 American Water are replaced by surface water  
11 extractions by another person or entity, what would the  
12 effect be on fish?

13 MR. SATO: Objection; incomplete hypothetical.  
14 He's really provided no details as to what --

15 CO-HEARING OFFICER BAGGETT: Sustained. Can  
16 you please rephrase the incomplete hypothetical.

17 MR. RUBIN: Extractions by persons or entities  
18 other than California American Water could be surface  
19 water extractions or subsurface Carmel River water  
20 extractions; is that correct?

21 MS. AMBROSIUS: Yes.

22 MR. RUBIN: Has NOAA Fisheries determined that  
23 the abundance of steelhead in the Carmel River is  
24 currently limited by habitat?

25 MS. AMBROSIUS: Habitat and other issues.

1 MR. RUBIN: What other issues?

2 MS. AMBROSIUS: There's a lot. They can be --  
3 passage of dams, migration routes, passage through  
4 dams.

5 MR. RUBIN: Any other factors that NOAA  
6 Fisheries has determined is affecting the abundance of  
7 steelhead in the Carmel River?

8 MS. AMBROSIUS: Well, the ocean conditions  
9 that come into effect. There are many -- there's any  
10 kind of natural disaster that occurs, forest fires,  
11 droughts, water year types.

12 MR. RUBIN: What about climate change?

13 MS. AMBROSIUS: Climate change is coming into  
14 effect now.

15 MR. RUBIN: How about recreational fishing?

16 MS. AMBROSIUS: It can affect it to some  
17 extent.

18 MR. RUBIN: Natural predation?

19 MS. AMBROSIUS: Yes.

20 MR. RUBIN: Development of the watershed?

21 MS. AMBROSIUS: Yes.

22 MR. RUBIN: Urban and rural waste discharges?

23 MS. AMBROSIUS: Yes. They -- all of these  
24 affect the habitat.

25 MR. RUBIN: What about exotic species? Does

1 it affect the abundance of the --

2 MS. AMBROSIUS: They could.

3 MR. RUBIN: -- steelhead?

4 Now Ms. Ambrosius, to prove a relationship  
5 between species abundance and a specific environmental  
6 condition that could withstand peer review, are  
7 statistical analyses often used?

8 MS. AMBROSIUS: Yes.

9 MR. RUBIN: Is it common practice to use  
10 correlations to determine the strength and direction of  
11 a particular relationship between variables?

12 MS. AMBROSIUS: Often.

13 MR. RUBIN: Has NOAA Fisheries established a  
14 statistically significant relationship between  
15 extractions of Carmel River water by California  
16 American Water and abundance of adult steelhead in the  
17 Carmel River?

18 MS. AMBROSIUS: Not that I'm aware of.

19 MR. RUBIN: Do you know if anyone has  
20 established such a relationship?

21 MS. AMBROSIUS: Not that I'm aware of.

22 MR. RUBIN: If such a statistical relationship  
23 were developed, it could be used to assess population  
24 level effects caused by changes in California American  
25 Water's extractions, correct?

1 MS. AMBROSIUS: Could you repeat that?

2 MR. RUBIN: If statistical relationships were  
3 developed, they could be used to assess population  
4 level effects caused by changes in California American  
5 Water extractions?

6 MS. AMBROSIUS: If you could limit the effects  
7 to just the pumping, to the extractions, but I don't  
8 know if that's possible.

9 MR. RUBIN: Thank you.

10 Are you aware that the majority of Carmel  
11 River water extracted by California American Water is  
12 subsurface water?

13 MS. AMBROSIUS: Yes.

14 MR. RUBIN: Is there a model that NOAA  
15 Fisheries uses to predict how changes in subsurface  
16 extractions impact Carmel River surface water flows?

17 MS. AMBROSIUS: We do not use a model. We  
18 rely on Monterey Peninsula Water Management District  
19 for the data.

20 MR. RUBIN: Thank you.

21 Ms. Ambrosius, there's been some discussion  
22 this morning about a document marked as PT-47 which is  
23 an agreement between NOAA Fisheries and California  
24 American Water. Do you recall?

25 MS. AMBROSIUS: Is that the settlement

1 agreement or the conservation agreement?

2 MR. RUBIN: I'll ask a different question.

3 PT-47 is a document entitled -- excuse me --

4 Conservation Agreement Between California American  
5 Water company and National Marine Fisheries Service  
6 Dealing with Steelhead in the Carmel River California.  
7 Is that the document we discussed this morning?

8 MS. AMBROSIUS: Yes.

9 MR. RUBIN: Is the agreement which has been  
10 marked PT-47 still in effect?

11 MS. AMBROSIUS: The conservation agreement?  
12 The terms of the conservation agreement are still in  
13 effect.

14 MR. RUBIN: Thank you.

15 NOAA Fisheries entered into the agreement  
16 which has been marked as PT-47 with the goal and the  
17 objective of protecting and conserving steelhead in the  
18 Carmel River including maximizing the Carmel River  
19 Basin substantial contribution towards recovering the  
20 south-central California coast steelhead ESU and to  
21 enforce the ESA; is that correct?

22 MS. AMBROSIUS: Yes.

23 MR. RUBIN: Ms. Ambrosius, there is an another  
24 document that has been marked PT-48. I believe it's an  
25 agreement entitled settlement agreement; is that

1 correct?

2 MS. AMBROSIUS: Are you asking me whether the  
3 settlement agreement is marked PT-48?

4 MR. RUBIN: Yes.

5 MS. AMBROSIUS: Yes, it is.

6 MR. RUBIN: And the agreement that has been  
7 marked PT-48 is still in effect, correct?

8 MS. AMBROSIUS: It was signed in 2006.

9 MR. RUBIN: Has the agreement marked PT-48  
10 been terminated?

11 MS. AMBROSIUS: No, it has not.

12 MR. RUBIN: Now this morning there was a  
13 little bit of discussion -- excuse me, before I get  
14 there: NOAA Fisheries recognizes in the agreement  
15 which has been marked PT-48 that since September 2001  
16 California American Water has implemented all the  
17 measures set forth in Phase I, Tier I of the  
18 conservation agreement which is marked PT-47; is that  
19 correct?

20 MS. AMBROSIUS: Yes.

21 MR. RUBIN: There was some discussion this  
22 morning about funding. Do you recall the discussions  
23 about funding?

24 MS. AMBROSIUS: Yes.

25 MR. RUBIN: And those discussions about

1 funding related to PT-48, the documents that is  
2 entitled Settlement Agreement?

3 MS. AMBROSIUS: Yes.

4 MR. RUBIN: Can you explain to me what  
5 the issue is with funding?

6 MS. AMBROSIUS: We're still under negotiations  
7 to figure out the funding mechanisms with Fish and  
8 Game.

9 MR. RUBIN: Specifically, has California  
10 American Water refused to provide the funding that is  
11 required under the settlement agreement?

12 MS. AMBROSIUS: No.

13 MR. RUBIN: Were the issues raised regarding  
14 funding by the National Marine Fisheries Service?

15 MS. AMBROSIUS: The issues actually were  
16 raised by the Department of Commerce.

17 MR. RUBIN: Thank you.

18 As far as you are aware, if those issues that  
19 were raised by the Department of Commerce are  
20 addressed, California American Water is ready and able  
21 to provide the funding necessary and required under the  
22 settlement agreement, PT-48?

23 MS. AMBROSIUS: Yes.

24 MR. RUBIN: Thank you.

25 Ms. Ambrosius, your testimony today reflects

1 support by NOAA Fisheries of adoption of the draft  
2 cease and desist order subject to certain  
3 modifications; is that correct?

4 MS. AMBROSIUS: Yes.

5 MR. RUBIN: NOAA Fisheries supports an order  
6 that requires California American Water to reduce its  
7 extractions of Carmel River water but recommends the  
8 reductions occur during the April to October period?

9 MS. AMBROSIUS: Yes.

10 MR. RUBIN: The reason NOAA Fisheries makes  
11 the recommendation is because it believes reductions  
12 during the April through October period will provide  
13 more surface water for out-migrating smolts; is that  
14 correct?

15 MS. AMBROSIUS: During the April -- the period  
16 between like April and May, during the summer season it  
17 would address smolts.

18 MR. RUBIN: Earlier you testified that  
19 California American Water extracts most of its Carmel  
20 River water subsurface through wells, correct?

21 MS. AMBROSIUS: Yes.

22 MR. RUBIN: Before NOAA Fisheries developed  
23 its recommendation which is reflected on page 10 of  
24 your written testimony, PT-37, did NOAA Fisheries  
25 conduct quantitative analyses of how much additional

1 surface water might exist in the Carmel River if  
2 California American Water were to reduce its  
3 extractions of subsurface Carmel River water?

4 MS. AMBROSIUS: No, we did not.

5 MR. RUBIN: Before the -- excuse me. Before  
6 NOAA Fisheries developed its recommendation which is  
7 reflected on page 10 of your written testimony, PT-37,  
8 did NOAA Fisheries conduct quantitative analysis of  
9 potential changes in steelhead abundance if California  
10 American Water were to reduce its extraction of  
11 subsurface Carmel River water?

12 A No, we did not.

13 Q Before NOAA Fisheries developed its  
14 recommendations which are reflected on page 10 of your  
15 testimony, PT-37, did NOAA Fisheries consider the  
16 potential impact of its proposed modification on the  
17 ability of California American Water to operate its  
18 distribution system?

19 MS. AMBROSIUS: We did, and that's why we  
20 suggested reducing it by that certain percentage during  
21 those months.

22 MR. RUBIN: And what factors did you consider  
23 when you made your recommendation?

24 MS. AMBROSIUS: We just felt that it was  
25 reasonable to require the 15 percent of the reduction

1 for the first year, whatever it is, during those  
2 certain months, and they would have the ability to  
3 reduce whatever the rest of the amount was during the  
4 other months. That could help deliver their water.

5 MR. RUBIN: Ms. Ambrosius, is there anyone at  
6 NOAA Fisheries familiar with how California American  
7 Water distribution system operates?

8 MS. AMBROSIUS: Fairly knowledgeable.

9 MR. RUBIN: Are there people that understand  
10 the pressure that's required in California American  
11 Water's system?

12 MS. AMBROSIUS: We understand that there is  
13 that requirement. I couldn't tell you the exact amount  
14 of pressure.

15 MR. RUBIN: Okay. Ms. Ambrosius, can you tell  
16 me with any degree of certainty today the abundance of  
17 steelhead in the Carmel River that would occur with  
18 the -- if the recommendations by NOAA Fisheries were  
19 adopted by the State Water Resources Control Board?

20 MS. AMBROSIUS: Could you repeat that please?

21 MR. RUBIN: Can you tell me today with any  
22 degree of certainty the number of -- the increase in  
23 the population of steelhead that would result if the  
24 State Water Resources Control Board were to adopt the  
25 schedule that you are recommending?

1 MS. AMBROSIUS: What we're looking at is the  
2 amount of habitat that could be -- could remain wetted  
3 and the population -- we did not look at the population  
4 numbers because that is determined based on a lot of  
5 other different factors. We're mostly looking at  
6 habitat.

7 MR. RUBIN: Thank you.

8 I'll turn to Mr. Stretars with some questions  
9 now. Mr. Stretars, in your testimony which is marked  
10 Exhibit 49, you indicate that the schedule being  
11 proposed by the Prosecution Team was developed by you  
12 and a gentleman by the name of Mr. John Collins; is  
13 that correct?

14 MR. STRETARS: Yes.

15 MR. RUBIN: And when did you develop that  
16 schedule?

17 MR. STRETARS: Schedule was developed during  
18 October of 2007.

19 MR. RUBIN: And is that the same time when you  
20 developed a rationale with reasonable expectations as  
21 you described on page 1 of your written testimony?

22 MR. STRETARS: Presumably. I'm not sure what  
23 you're talking about, but I would say yes.

24 MR. RUBIN: Let's make sure that the record is  
25 clear. Mr. Stretars, on page 1 you say:

1           With the assistance of John Collins, we  
2           evaluated and developed a rationale with  
3           reasonable expectations for moving  
4           California American Water forward  
5           towards the goal of terminating  
6           unauthorized diversions from the Carmel  
7           River.

8           Do you see that statement?

9           MR. STRETARS: I don't know where.

10          MR. RUBIN: It's about halfway through page 1,  
11 right -- it's the paragraph right under the line that  
12 appears. Do you see the statement that I read?

13          MR. STRETARS: Okay. The sentence there,  
14 second sentence. Yes, I see it.

15          MR. RUBIN: In the second sentence on page 1  
16 of Exhibit 49, you reference the development of a  
17 rationale. Do you see that?

18          MR. STRETARS: Yes, I do.

19          MR. RUBIN: When did you develop that  
20 rationale?

21          MR. STRETARS: That rationale was developed  
22 again by the same period of time following the initial  
23 evaluations and review of Cal Am's file and what have  
24 you.

25          MR. RUBIN: Thank you.

1           Mr. Stretars, I ask that you now turn to page  
2 3. There's some discussion between you and Mr. Laredo  
3 regarding a power grab that ends with the sentence:  
4 This competitive evaluation of water supply. Do you  
5 see that sentence?

6           MR. STRETARS: Mm-hmm. I do.

7           MR. RUBIN: What is the basis for that  
8 statement?

9           MR. STRETARS: I think the basis of that  
10 statement was to say basically it appears that there is  
11 some question whether the 2014 date that's been  
12 identified in Cal Am document PT-50 really can be met  
13 because there are other issues that -- appearing on the  
14 horizon which they. . . .

15           MR. RUBIN: Mr. Stretars, have you evaluated  
16 the specific milestones California American Water needs  
17 to meet in order to achieve the 2014 deadline?

18           MR. STRETARS: Not specifically, no.

19           MR. RUBIN: So you're basing that statement  
20 purely on concerns that you might have with the  
21 Ratepayer Advocate's activities?

22           MR. STRETARS: Yes.

23           MR. RUBIN: And explain to me what you -- how  
24 you understand the Ratepayer Advocate's activities.

25           MR. STRETARS: It appears they are looking at

1 a broader program to work with that deals with various  
2 conservation and recycling programs that essentially  
3 could replace or provide the same volume water as a  
4 coastal water project, so.

5 MR. RUBIN: Do you know if the Division of  
6 Ratepayer Advocate is performing that evaluation in the  
7 context of development of an environmental document  
8 pursuant to the California Environmental Quality Act?

9 MR. STRETARS: I don't know.

10 MR. RUBIN: Turning back to some more basic,  
11 hopefully easier questions. You received a bachelor's  
12 of science in civil engineering in 1973; is that  
13 correct?

14 MR. STRETARS: Yes, I did.

15 MR. RUBIN: And you became a certified -- you  
16 became certified as a California Professional Engineer  
17 in civil engineering in 1977?

18 MR. STRETARS: Yes.

19 MR. RUBIN: And you began working for State  
20 Water Resources Control Board 1981?

21 MR. STRETARS: No.

22 MR. RUBIN: When did you begin working for  
23 State Water Resources Control Board?

24 MR. STRETARS: 1974.

25 MR. RUBIN: So for the period 1974 through the

1 present, you've been employed with the State Water  
2 Resources Control Board?

3 MR. STRETARS: Yes, I have been.

4 MR. RUBIN: Have you ever held a position  
5 involving water supply planning?

6 MR. STRETARS: Specifically, no.

7 MR. RUBIN: Have you ever worked with an  
8 entity -- excuse me. Have you ever worked for an  
9 entity responsible for delivering potable water supply?

10 MR. STRETARS: No.

11 MR. RUBIN: Have you ever prepared a  
12 comprehensive water supply planning study?

13 MR. STRETARS: Study, no.

14 MR. RUBIN: Did you prepare the ordering  
15 paragraphs of the draft cease and desist order which is  
16 the subject of this proceeding?

17 MR. STRETARS: What do you mean by ordering?  
18 The order portion?

19 MR. RUBIN: Yes.

20 MR. STRETARS: Yes, they were developed --  
21 under my direction, they were developed.

22 MR. RUBIN: And who worked under your  
23 direction?

24 MR. STRETARS: Mr. John Collins.

25 MR. RUBIN: Are you familiar with California

1 Department of Public Health rules, regulations, and  
2 standards applicable to water system operations?

3 MR. STRETARS: Not to any extent degree, no.

4 MR. RUBIN: And therefore you haven't  
5 considered the effect of the draft cease and desist  
6 order on California American Water's ability to meet  
7 California Department of Public Health rules,  
8 regulations, and standards?

9 MR. STRETARS: So meet the regulations, no.

10 MR. RUBIN: Are you familiar with Public  
11 Utility Code section 8201?

12 MR. STRETARS: No, I'm not.

13 MR. RUBIN: Are you familiar with General  
14 Order 103 of California Public Utilities Commission?

15 MR. STRETARS: No.

16 MR. RUBIN: And therefore I assume that you  
17 haven't considered either Public Utilities Code Section  
18 821 or General Order 103 of the California Public  
19 Utility Commission before you issued the draft cease  
20 and desist order.

21 MR. STRETARS: No, I did not.

22 MR. RUBIN: Did you consider the ability of  
23 California American Water to meet any legal mandates  
24 other than those you believe the State Water Resources  
25 Control Board has imposed on California American Water?

1 MR. STRETARS: We looked at reasonableness.

2 MR. RUBIN: I'm sorry?

3 MR. STRETARS: We looked at the issue of  
4 reasonableness and public health and safety.

5 MR. RUBIN: Other than that, were there any  
6 other legal mandates that you considered?

7 MR. STRETARS: No legal mandates other than  
8 the Board says unauthorized diversion.

9 MR. RUBIN: Now, I believe earlier you  
10 testified that the Prosecution Team did consider fire  
11 flows when it was issuing -- when it was developing the  
12 draft cease and desist order.

13 MR. STRETARS: We -- you know, we looked at  
14 fire circumstances.

15 MR. RUBIN: And explain to me how you  
16 considered fire and fire circumstances.

17 MR. STRETARS: From the standpoint of a water  
18 rights criteria, fire suppressions, this is emergency  
19 action which is not necessarily required to have an  
20 appropriative water right because it's an emergent  
21 situation.

22 MR. RUBIN: So did you incorporate that into  
23 the draft cease and desist order by providing relief if  
24 it's necessary for public health and safety.

25 MR. STRETARS: That's correct. Paragraph 2 of

1 the order.

2 MR. RUBIN: Thank you.

3 Do you know what the total pumping capacity of  
4 the Carmel River wells owned and operated by the  
5 California American Water Company is?

6 MR. STRETARS: Specific numbers, no, I do not.

7 MR. RUBIN: Do you know what the current  
8 average daily demand of California American Water's  
9 Monterey Peninsula customers is?

10 MR. STRETARS: It runs -- daily demand -- no,  
11 monthly, runs about a thousand gallons a month. A  
12 thousand acre feet.

13 MR. RUBIN: And do you base that purely on the  
14 amount of annual diversions by California American  
15 Water?

16 MR. STRETARS: It's based on annual diversions  
17 looking at your fourth quarter reports.

18 MR. RUBIN: Thank you.

19 Do you know what the current maximum daily  
20 demand of California American Water's Monterey  
21 Peninsula customers is?

22 MR. STRETARS: At this point in time, no.

23 MR. RUBIN: Do you believe it is important for  
24 California American Water to maintain proper water  
25 pressure in its Monterey District's distribution

1 system?

2 MR. STRETARS: Yes, it's important to maintain  
3 for fire suppression purposes.

4 MR. RUBIN: Do you think it's important to  
5 maintain proper pressure to serve customers?

6 MR. STRETARS: Yes.

7 MR. RUBIN: Can you please explain the purpose  
8 of distribution storage in California American Water's  
9 Monterey District distribution system?

10 MR. STRETARS: Be a little more specific.  
11 What do you mean by storage?

12 MR. RUBIN: Can you define distribution  
13 storage for me?

14 MR. STRETARS: I'm assuming that's referring  
15 to your in-system regulatory capacity as opposed to  
16 your instantaneous pumping rate at the river.

17 MR. RUBIN: Let me ask my question  
18 differently.

19 Do you know if it's important to maintain  
20 distribution storage in California American Water's  
21 Monterey District distribution system?

22 MR. STRETARS: I don't know about your system  
23 specifically. I would say it's important in systems to  
24 be able to maintain, again, a quantity available for  
25 fire suppression and domestic health and safety needs.

1           MR. RUBIN: And so you understand that it is  
2 important to maintain distribution storage to meet  
3 public health and safety needs?

4           MR. STRETARS: Yes.

5           MR. RUBIN: Are there any other reasons why  
6 you might want to maintain distribution storage that  
7 you are aware of?

8           MR. STRETARS: I'm not sure where you're going  
9 here. I know that, from looking at the system, it  
10 appears that Cal Am is a little bit short on  
11 distribution storage.

12          MR. RUBIN: Let me ask my question again.

13          Do you know if it's important to maintain  
14 distribution storage for any other reasons besides  
15 protecting public health and safety?

16          MR. STRETARS: Just a general operation. I'm  
17 not sure where you're going with your question, I  
18 guess.

19          MR. RUBIN: Okay. Thank you. I'm not going  
20 anywhere. Just trying to understand your knowledge.

21          Can you explain equalization storage for me?

22          MR. STRETARS: Equalization storage would be  
23 trying to balance the demands of the system versus the  
24 capacity that you have available within the system.

25          MR. RUBIN: So it's a balance between demand

1 and --

2 MR. STRETARS: And supply.

3 MR. RUBIN: Do you know how much fire flow  
4 California American Water must maintain in its Monterey  
5 Peninsula distribution system?

6 MR. STRETARS: No, I don't.

7 MR. RUBIN: Do you know how fire flow is  
8 calculated?

9 MR. STRETARS: Not specifically, no.

10 CO-HEARING OFFICER BAGGETT: How much longer  
11 do you anticipate?

12 MR. RUBIN: Probably a half an hour or so.

13 CO-HEARING OFFICER BAGGETT: If you could  
14 expedite it, it would be appreciated.

15 MR. RUBIN: Mr. Stretars, you believe that the  
16 quantity of water needed to protect the health and  
17 safety of Monterey Peninsula can be based upon Section  
18 697 of Title 23 of the California Code of Regulations;  
19 is that correct?

20 MR. STRETARS: That wasn't the intent. The  
21 intent was to use that as a -- kind of a reality check  
22 on the -- on our reaction.

23 MR. RUBIN: So you did not rely upon Section  
24 697 of Title 23 of California Code of Regulations?

25 MR. STRETARS: We did rely upon it, but not in

1 that context.

2 MR. RUBIN: Can you explain to me how you  
3 relied upon it?

4 MR. STRETARS: Well, what we're looking at  
5 here, initially we evaluated, as stated in my  
6 testimony, that we looked at four different levels of  
7 production levels, two of which were reasonably  
8 accessible to the District to be able to potentially  
9 comply with, and two of which were placing rather  
10 additional constraints upon the District.

11 Looking at the overall population census for  
12 the city and evaluating that the 75 percent -- or  
13 75 gallons per day per person number, we looked at a  
14 number of what essentially was required for that health  
15 and safety, that domestic demand within the city area  
16 to compare that to where it's in relationship to the  
17 35, 50 percent reduction levels and as against the  
18 available supplies that you had from various  
19 alternative sources available to Cal Am.

20 MR. RUBIN: Now you focused on Section 697 of  
21 Title 23 of California Code of Regulations, and  
22 specifically the amount of water that's available, or  
23 use of water, by a fully plumbed home; is that correct?

24 MR. STRETARS: That's correct.

25 MR. RUBIN: Are there other quantities of

1 water considered reasonable under Section 697 of Title  
2 23 of the California Code of Regulations?

3 MR. STRETARS: There are.

4 MR. RUBIN: In fact, under the section that  
5 you referenced, the use for homes also applies to  
6 resorts, motels, organized camps; is that correct?

7 MR. STRETARS: That's correct.

8 MR. RUBIN: Under Section 697 of Title 23 to  
9 the California Code of Regulations, it also provides a  
10 quantity of water considered reasonable for lawns,  
11 gardens, orchards, and grounds; is that correct?

12 MR. STRETARS: That is correct.

13 MR. RUBIN: The quantity of water considered  
14 reasonable under Section 697 of Title 23 to the  
15 California Code of Regulations are intended to assist a  
16 person or entity when seeking a permit to appropriate  
17 water; is that correct?

18 MR. STRETARS: Yes.

19 MR. RUBIN: Mr. Stretars, in your calculation  
20 as presented on page 5 of your written testimony,  
21 Exhibit PT-49, is there any calculation of the amount  
22 of water that would be used by resorts?

23 MR. STRETARS: Which calculation are you  
24 referring to?

25 MR. RUBIN: The calculation that appears on

1 page 5, the last paragraph.

2 MR. STRETARS: Last paragraph. The  
3 calculation there is based on a population of 111,500  
4 people at 75 gallons per day, whatever the -- that's  
5 your resident population, however that would apply to  
6 it. It would include resorts, so forth.

7 MR. RUBIN: Do you know if the figure of  
8 100,000 -- excuse me. Do you know if the figure of  
9 111,500 people includes people residing in resorts,  
10 motels, or organized camps within the Monterey  
11 Peninsula?

12 MR. STRETARS: The number that we assumed  
13 there was probably a resident population.

14 MR. RUBIN: Thank you.

15 And the number that appears on the last  
16 paragraph on page 5 of PT-49 does not include any  
17 calculation for lawns, gardens, orchards, or grounds;  
18 is that correct?

19 MR. STRETARS: Yes, that was figured for the  
20 30-50 percent level which is assumed that would be the  
21 secondary use.

22 MR. RUBIN: I'm sorry, and where is that part  
23 of the calculation?

24 MR. STRETARS: Pardon?

25 MR. RUBIN: My question -- I missed your

1 answer. My question was: Does the calculation on page  
2 5 of PT-49 include water use for lawns, gardens,  
3 orchards, and grounds?

4 MR. STRETARS: No it does not. We assumed  
5 you're under restrictions.

6 MR. RUBIN: Thank you.

7 Now if I understand the California Code of  
8 Regulations correctly, there is a Section 696 which  
9 precedes Section 697; is that correct?

10 MR. STRETARS: I take your word for it.

11 MR. RUBIN: Do you have --

12 MR. STRETARS: Do you have the document here,  
13 696?

14 MR. RUBIN: I would ask Ms. Kincaid to provide  
15 Mr. Stretars with a copy of Section 696.

16 I would like to have the document marked as  
17 Exhibit CAW, I believe it is 41 is the next in order.

18 MR. LAREDO: Do you have other copies?

19 MR. RUBIN: Mr. Stretars, have you had time to  
20 review Section 696 --

21 MR. LAREDO: Mr. Baggett, we do not have  
22 copies in front of us. Would it be possible to have  
23 copies made so we can track this testimony?

24 MR. RUBIN: I apologize for not having enough.  
25 I just have one question about this.

1 CO-HEARING OFFICER BAGGETT: It's a very short  
2 code section.

3 MR. LAREDO: Could someone read it into the  
4 record so that we can --

5 MR. RUBIN: I'll ask a question and get that  
6 into the record.

7 CO-HEARING OFFICER BAGGETT: Okay.

8 MR. RUBIN: Mr. Stretars, have you had time to  
9 review Section 696 of Title 23 to the California Code  
10 of Regulations?

11 MR. STRETARS: Yes, I have.

12 MR. RUBIN: And does Section 696 of Title 23  
13 to the California Code of Regulations provide that the  
14 amount of water which to apply is governed by the  
15 estimated amounts which can be put to beneficial use  
16 including reasonable conveyance losses?

17 MR. STRETARS: Yes, it does.

18 MR. RUBIN: Thank you.

19 Mr. Stretars, is it your understanding that  
20 California American Water currently extracts from the  
21 Carmel River on average 700 -- excuse me -- 7,602 acre  
22 feet per year in excess of its pre-1914, riparian, and  
23 licensed water rights?

24 MR. STRETARS: Assuming that's in my  
25 testimony, so I would have to say yes.

1 MR. RUBIN: Thank you.

2 You are also of the opinion that California  
3 American Water can reduce the average amount of water  
4 it extracts from the Carmel River in excess of its  
5 pre-1914, riparian, and licensed rights to 5,833 acre  
6 feet?

7 MR. STRETARS: Where are you finding that  
8 number at?

9 MR. RUBIN: That's a question for you. I  
10 believe there is --

11 MR. STRETARS: If that's in my testimony --  
12 (Interruption by the reporter)

13 MR. STRETARS: I said I believe I made that  
14 statement.

15 MR. RUBIN: You are of that opinion because  
16 you believe there are immediately achievable efforts  
17 that should reduce California American Water's level of  
18 extractions from the Carmel River to 5,833 acre feet;  
19 is that correct?

20 MR. STRETARS: Yes.

21 MR. RUBIN: And the efforts you believe that  
22 are immediately achievable are construction and  
23 operation of the Sand City desalination plant, recovery  
24 of water under the ASR Phase 1 project, and reductions  
25 in unaccountable losses within the California American

1 Water distribution system; is that correct?

2 MR. STRETARS: That's correct.

3 MR. RUBIN: Are there any other efforts you  
4 believe are immediately achievable?

5 MR. STRETARS: Conservation on the part of the  
6 District, City, County.

7 MR. RUBIN: Other than conservation, is there  
8 anything else?

9 MR. STRETARS: Nothing that comes to mind.  
10 Well, additional projects. Coastal Water Project, for  
11 example.

12 MR. RUBIN: Do you believe that the Coastal  
13 Water Project is immediately achievable?

14 MR. STRETARS: It's not immediately  
15 achievable. It's been set for a deadline of 2014, I  
16 believe.

17 MR. RUBIN: Thank you. And would you consider  
18 a project that is set for completion in 2014 to be  
19 immediately achievable?

20 MR. STRETARS: No.

21 MR. RUBIN: Mr. Stretars, you prepared your  
22 written testimony, PT-49, after the close of the first  
23 phase of this proceeding; is that correct?

24 MR. STRETARS: Yes.

25 MR. RUBIN: And to support your written

1 testimony, you relied upon testimony submitted for or  
2 during the first phase of this proceeding; is that  
3 correct?

4 MR. STRETARS: Yes, I did, I believe.

5 MR. RUBIN: Now Mr. Stretars, it is your  
6 understanding that the Division of Ratepayer Advocates  
7 is developing a comprehensive water restoration plan;  
8 is that correct?

9 MR. STRETARS: Say that again? I believe so.

10 MR. RUBIN: Is it your understanding that the  
11 Division of Ratepayer Advocates is developing a  
12 comprehensive water restoration plan?

13 MR. STRETARS: I did not believe this was a  
14 water restoration plan.

15 MR. RUBIN: I believe I did misspeak. Is it  
16 your understanding that the Division of Ratepayer  
17 Advocates is developing a comprehensive water resource  
18 plan?

19 MR. STRETARS: Yes, yes.

20 MR. RUBIN: And you indicated that the  
21 evaluation of the comprehensive water resource plan  
22 could delay the Coastal Water Project?

23 MR. STRETARS: Yes.

24 MR. RUBIN: And it is also your understanding  
25 that the Division of Ratepayer Advocates is pursuing

1 that plan because of the potential cost of the Coastal  
2 Water Project?

3 MR. STRETARS: That's what I interpret again  
4 from -- gather from Exhibit PT-51.

5 MR. RUBIN: Do you know if the Division of  
6 Ratepayer Advocates has formed an opinion that the cost  
7 of the Coastal Water Project is unreasonable?

8 MR. STRETARS: No, I do not.

9 MR. RUBIN: Do you know if the Division of  
10 Ratepayer Advocates identified a less expensive  
11 alternative to the Coastal Water Project?

12 MR. STRETARS: I do not.

13 MR. RUBIN: Is it possible that the Division  
14 of Ratepayer Advocates will identify the Coastal Water  
15 Project as its preferred alternative?

16 MR. STRETARS: It may.

17 MR. RUBIN: If the Division of Ratepayer  
18 Advocates identifies the Coastal Water Project as its  
19 preferred alternative, the comprehensive water resource  
20 plan could actually expedite the Coastal Water Project,  
21 correct?

22 MR. STRETARS: That I don't know.

23 MR. RUBIN: Mr. Stretars, in your written  
24 testimony, PT-49, you indicate that the Prosecution  
25 Team concluded in the draft cease and desist order that

1 California American Water has extracted Carmel River  
2 water without authorization; is that correct?

3 MR. STRETARS: I believe so.

4 MR. RUBIN: That conclusion is based upon  
5 California American Water extracting water in excess of  
6 its pre-1914, riparian, and licensed water rights?

7 MR. STRETARS: That's correct.

8 MR. RUBIN: When the State Water Resources  
9 Control Board adopted Order 95-10, the State Water  
10 Resources Control Board found that the pre-1914,  
11 riparian, and licensed water rights of California  
12 American Water allowed it to extract no more than  
13 3,370 -- excuse me -- 3,367 acre feet of Carmel River  
14 water; is that correct?

15 MR. STRETARS: That's correct.

16 MR. RUBIN: Are you of the opinion that a  
17 cease and desist order should issue because California  
18 American Water has extracted more than 3,367 acre feet  
19 of Carmel River water since the issuance of Order  
20 95-10?

21 MR. STRETARS: Yes.

22 MR. RUBIN: Though you would agree the State  
23 Water Resources Control Board contemplated that for  
24 some period after the issuance of Order 95-10  
25 California American Water would continue to extract

1 more than 3,367 acre feet from the Carmel River.

2 MR. STRETARS: Yes, I agree to that. There  
3 was no limitation set on that.

4 MR. RUBIN: Thank you. You indicate that  
5 California American Water has been extracting an  
6 average of -- excuse me.

7 Mr. Stretars, you are aware that when  
8 California American Water operates under a stage of  
9 conservation guidelines, the community on the Monterey  
10 Peninsula may not respond by reducing its water use?

11 MR. STRETARS: I presume that's true, yes.

12 MR. RUBIN: You believe that California  
13 American Water could achieve a 15 percent reduction if  
14 it operated under Stage 3 Water Rationing as  
15 established in the Monterey Peninsula Water Management  
16 District's Rule 164?

17 MR. STRETARS: Yes.

18 MR. RUBIN: What is the purpose of Stage 3  
19 Water Rationing as established by the Monterey  
20 Peninsula Water Management District's Rule 164?

21 MR. STRETARS: I'm not sure specifically what  
22 you want me -- basically, the intent of reducing so  
23 that they can get through a drought situation.

24 MR. RUBIN: I'm sorry; I missed your answer.  
25 Reducing?

1           MR. STRETARS: They can reduce the supply that  
2 is necessary to get through a drought situation.

3           MR. RUBIN: Do you believe Stage 3 Water  
4 Rationing is intended to reduce the supply available to  
5 California American Water?

6           MR. STRETARS: Well, it's intended to --  
7 supply -- it's water conservation action of the parties  
8 that are receiving water effectively, but that also  
9 entails or would allow Cal Am to reduce their supply of  
10 the demand from the river.

11          MR. RUBIN: Now Mr. Stretars, in your written  
12 testimony -- and I believe Mr. Laredo asked you a few  
13 questions about it -- you presented the Prosecution  
14 Team's conclusion that there's no practical difference  
15 between reduced supply because of drought and reduced  
16 supply because of insufficient water rights; is that  
17 correct?

18          MR. STRETARS: Yes.

19          MR. RUBIN: You concede, though, that a  
20 drought is an uncontrollable natural circumstance,  
21 right?

22          MR. STRETARS: Yes.

23          MR. RUBIN: And a reduced water supply because  
24 of insufficient water rights could be affected through  
25 regulatory or judicial action?

1 MR. STRETARS: Yes.

2 MR. RUBIN: And in many cases a regulatory  
3 judicial action involves balancing of interests?

4 MR. STRETARS: It does.

5 MR. RUBIN: Thank you.

6 Mr. Stretars, on page 2 of your written  
7 testimony, you discuss system losses. We talked a  
8 little bit about that earlier, do you recall?

9 MR. STRETARS: Yes.

10 MR. RUBIN: By system losses, are you  
11 referring to unaccounted losses?

12 MR. STRETARS: Referring to unaccounted water  
13 within the system.

14 MR. RUBIN: On page 2 of your testimony, you  
15 testified that California American Water can  
16 immediately reduce its extractions of Carmel River  
17 water by 849 acre feet per year using the Sand City  
18 desal plant water and reductions in unaccounted losses  
19 or unaccounted water; is that correct?

20 MR. STRETARS: Yes, I did.

21 MR. RUBIN: Is your estimate of 849 acre feet  
22 per year based upon maximum use of 300 acre feet from  
23 the San City desal plant and 549 acre feet of water  
24 from reduced -- reductions in unaccounted losses or  
25 unaccounted water?

1 MR. STRETARS: Yes, it is.

2 MR. RUBIN: And do you recall testimony from  
3 California American Water which explained the phrase  
4 "unaccounted losses" as utility nomenclature?

5 MR. STRETARS: No, I don't.

6 MR. RUBIN: Unaccounted-for losses within the  
7 California American Water distribution system  
8 represented water extracted from the Carmel River by  
9 California American Water for which California American  
10 Water does not bill the customer, correct?

11 MR. STRETARS: If that's your interpretation.

12 MR. RUBIN: I'm asking you if you agree.

13 Are unaccounted-for losses within the  
14 California American Water distribution system water  
15 that's extracted from the Carmel River by California  
16 American Water for which California American Water does  
17 not bill a customer?

18 MR. STRETARS: I don't know about the billing  
19 part.

20 MR. SATO: He previously indicated that he  
21 didn't know, so I think asking him again --

22 MR. RUBIN: I don't recall that answer, and I  
23 think it's pretty straightforward. Rather than going  
24 through the record, I would hope Mr. Stretars could  
25 answer.

1 CO-HEARING OFFICER BAGGETT: Overruled; please  
2 answer.

3 MR. STRETARS: I would concur it's for pumping  
4 the river. I would concur it's water that's  
5 unaccounted for. I don't know whether it's billed or  
6 not.

7 MR. RUBIN: Do you agree that water  
8 characterized as unaccounted-for losses or unaccounted  
9 water may be beneficially used?

10 MR. STRETARS: It may be.

11 MR. RUBIN: Thank you.

12 And you cite testimony of I think Mr. Bunowsky  
13 for statements you made regarding unaccounted-for  
14 losses within the California American Water  
15 distribution system. Do you recall that?

16 MR. STRETARS: Yes, I do.

17 MR. RUBIN: Do you recall Mr. Bunowsky  
18 explaining that for California American Water to reduce  
19 unaccounted-for losses certain programs may be  
20 necessary to be implemented?

21 MR. STRETARS: No, I don't. I was not here  
22 for that portion of the hearing, I believe.

23 MR. RUBIN: Would you think that to reduce  
24 unaccounted-for losses system improvements are  
25 necessary?

1 MR. STRETARS: Yes, I would say so.

2 MR. RUBIN: Do you know what type of actions  
3 California American Water would have to undertake to  
4 implement certain actions to reduce unaccounted-for  
5 losses?

6 MR. STRETARS: I can imagine, but I don't know  
7 offhand necessarily.

8 MR. RUBIN: Do you think that California  
9 American Water would have to undertake a main  
10 replacement program in order to reduce unaccounted-for  
11 losses?

12 MR. STRETARS: If your mains are leaking  
13 maybe. I don't know. Depends where the water's being  
14 lost from.

15 MR. RUBIN: Do you know of any municipal water  
16 supplier that has system losses of 7 percent?

17 MR. STRETARS: I don't offhand.

18 MR. RUBIN: Do you know if California American  
19 Water could reduce its unaccounted-for losses to a  
20 level of 7 percent before the 2008-2009 water year?

21 MR. STRETARS: Depends on what the losses are.

22 MR. RUBIN: Let me ask my question again.

23 Do you know if California American Water could  
24 reduce its unaccounted-for losses to a level of  
25 7 percent before the 2008-2009 water year?

1 MR. STRETARS: No, I don't know.

2 MR. RUBIN: Thank you.

3 Do you know how long it might take for  
4 California American Water to reduce its unaccounted-for  
5 losses to a level of 7 percent.

6 MR. STRETARS: Again, depends on the severity  
7 and the locations of the losses.

8 MR. RUBIN: And again, you don't know how  
9 California American Water is losing the water?

10 MR. STRETARS: That's right.

11 MR. RUBIN: Therefore you don't know how long  
12 it might take California American Water to reduce  
13 unaccounted-for losses to a level of 7 percent?

14 MR. STRETARS: That's correct.

15 MR. RUBIN: Can California American Water  
16 reduce its unaccounted-for losses by 20 percent -- to  
17 20 percent or -- excuse me; strike that.

18 Can California American Water reduce its  
19 unaccounted-for losses by 20 percent before the  
20 2008-2009 water year?

21 MR. STRETARS: I don't have specifics. I know  
22 you're at 12 percent now, and Mr. Bunowsky indicated  
23 could take 20 percent of that. I don't know exactly  
24 what the time frame was on that.

25 MR. RUBIN: Thank you.

1           Now, do you know how much water will remain in  
2 the subterranean aquifer if California American Water  
3 were to reduce its unaccounted-for losses to a level of  
4 7 percent?

5           MR. STRETARS: No, I do not.

6           MR. RUBIN: Do you know how much water would  
7 remain in the subterranean aquifer if California  
8 American Water were to reduce its unaccounted-for  
9 losses by 20 percent?

10          MR. STRETARS: No.

11          MR. RUBIN: Do you know how much water  
12 California American Water's customers might conserve  
13 through reductions in unaccounted-for losses?

14          MR. STRETARS: No.

15          MR. RUBIN: Do you know if California American  
16 Water can take delivery of San City desalination plant  
17 water during the 2008-2009 water year?

18          MR. STRETARS: I believe it may be possible.

19          MR. RUBIN: Do you know when the Sand City  
20 desal plant is set for completion of construction?

21          MR. STRETARS: No. Not specifically, no.

22          MR. RUBIN: Do you know if it's in 2010?

23          MR. STRETARS: Apparently, it is.

24          MR. RUBIN: Do you know if it is?

25          MR. STRETARS: No, I do not know. My

1 impression was that it was coming along and would be  
2 shortly, but I don't know any specific date on it.

3 MR. RUBIN: Thank you.

4 Are you aware of a January 31st, 2006 letter  
5 from then-Executive Director Celeste Cantu to Steve  
6 Leonard of California American Water concerning the  
7 Sand City desalination plant?

8 MR. STRETARS: I am not.

9 MR. RUBIN: I believe there is a January 31st,  
10 2006 letter from then-Executive Director Celeste Cantu  
11 to Steve Leonard of California American Water which has  
12 been attached to Sand City 1, as attachment 1. Does it  
13 refresh your recollection?

14 MR. STRETARS: No, it doesn't.

15 MR. RUBIN: Now, Mr. Stretars, you indicate  
16 that the Prosecution Team had discussions with the  
17 California Department of Health Services; is that  
18 correct?

19 MR. STRETARS: Yes.

20 MR. RUBIN: With whom at the California  
21 Department of Health Services did the Prosecution Team  
22 talk?

23 MR. STRETARS: I wasn't privy to the specific  
24 conversation. We talked to staff, but I don't know who  
25 specifically.

1           MR. RUBIN: Did you speak with a  
2 representative from the California Department of Health  
3 Services?

4           MR. STRETARS: Myself directly, no.

5           MR. RUBIN: Do you know who did?

6           MR. STRETARS: I believe Mr. John Collins did.

7           MR. RUBIN: Do you know what questions, if  
8 any, Mr. Collins asked the California Department of  
9 Health Services?

10          MR. STRETARS: We were seeking a specific  
11 number relative to health and safety.

12          MR. RUBIN: Do you know if Mr. Collins asked  
13 the staff at California Department of Health Services  
14 for a number because it was seeking information to  
15 support a cease and desist order that was being brought  
16 before the State Water Resources Control Board?

17          MR. STRETARS: We asked -- no. We simply  
18 asked if they had a specific number, a specific  
19 reasonable number for public health and safety  
20 consideration.

21          MR. RUBIN: And did the specific number that  
22 you sought concern how much water residential residents  
23 used?

24          MR. STRETARS: I don't know if it's specific  
25 to residents, but we were just looking for -- asking

1 for a number, which we didn't get a real good answer.

2 MR. RUBIN: Thank you.

3 Now Mr. Stretars, the Prosecution Team  
4 supports the recommendation of Ms. Ambrosius; is that  
5 correct?

6 MR. STRETARS: To an extent.

7 MR. RUBIN: To what extent do you not support  
8 Ms. Ambrosius' recommendation?

9 MR. STRETARS: We don't support from the  
10 standpoint there have been no specific studies  
11 detailing if Cal Am were to reduce to those levels on a  
12 daily basis, daily operation, that there would not be  
13 impact to health and safety considerations.

14 MR. RUBIN: If the State Water Resources  
15 Control Board were to adopt the cease and desist order  
16 as proposed by the Prosecution Team during the 2008  
17 water year, what is the maximum amount of Carmel River  
18 water California American Water would be precluded from  
19 extracting?

20 MR. STRETARS: Maximum? About 1300 acre foot,  
21 I believe. 1300 acre feet.

22 MR. RUBIN: Under Order 95-10, California  
23 American Water has a Carmel River extraction limit of  
24 11,285; is that correct?

25 MR. STRETARS: Yes.

1           MR. RUBIN: And in the 2008-2009 water year,  
2 the Prosecution Team recommends to the State Board that  
3 it order California American Water to reduce its  
4 extractions by 15 percent?

5           MR. STRETARS: Yes.

6           MR. RUBIN: Let me represent to you, if my  
7 calculations are correct, 15 percent of 11,285 is  
8 approximately 1,693 acre feet. If that were -- if  
9 1,693 acre feet were 15 percent of 11,285 -- let's  
10 assume that it is for the purposes of my question.

11          MR. STRETARS: I would agree with you. The  
12 number I was looking at was relative to the average  
13 long-term.

14          MR. RUBIN: Just to make sure the record's  
15 clear, the maximum amount of water that California  
16 American Water would be precluded from extracting from  
17 the Carmel River during the 2008 water year if the  
18 recommendations of the Prosecution Team were adopted by  
19 the State Board is 1,693 acre feet?

20          MR. STRETARS: That's right.

21          MR. RUBIN: If the State Board adopts the  
22 cease and desist order as proposed by the Prosecution  
23 Team, if California American Water reduces its  
24 extraction by 1,693 acre feet, how much water would  
25 remain in the Carmel River as surface water?

1           MR. STRETARS: I don't know. Depends on a lot  
2 of factors.

3           MR. RUBIN: Is it possible that the reduction  
4 would simply increase the amount of subsurface Carmel  
5 River water?

6           MR. STRETARS: It might. That would be a  
7 benefit to the habitat.

8           MR. RUBIN: And what's the basis for your  
9 belief that the water that remained subsurface would  
10 benefit the habitat?

11          MR. STRETARS: Cottonwood trees along the  
12 bank, groves that died in the past.

13          MR. RUBIN: And how do you know that  
14 cottonwoods that would have otherwise died would remain  
15 alive if 1,693 acre feet remain in the subsurface?

16          MR. STRETARS: Not being a biologist, would  
17 have to be a statement on my part as an observer.

18          MR. RUBIN: Okay, thank you.

19                 Is it possible that California American  
20 Water -- excuse me. Is it possible that if California  
21 American Water reduced its water use by 1,693 acre feet  
22 other persons or entities holding water rights would  
23 extract that water from the subsurface?

24          MR. STRETARS: If they're taking their  
25 entitlements that they are now, I don't know why it

1 should be increased.

2 MR. RUBIN: Is it possible that they would  
3 increase as a result of reductions California American  
4 Water would be ordered by the State Water Resources  
5 Control Board?

6 MR. STRETARS: I don't know if I can answer  
7 that.

8 CO-HEARING OFFICER BAGGETT: Let's take a time  
9 check. Where are you at, Mr. Rubin?

10 MR. RUBIN: Probably another ten minutes. I  
11 have two more pages, two and a half pages.

12 CO-HEARING OFFICER BAGGETT: Okay.

13 MR. RUBIN: If the State Water Resources  
14 Control Board adopted the cease and desist order as  
15 proposed by the Prosecution Team, do you have any idea  
16 of how many additional adult steelhead may reside in  
17 the Carmel River as a result of the action by the State  
18 Water Resources Control Board?

19 MR. STRETARS: No.

20 MR. JACKSON: Mr. Baggett, I'd like to object  
21 to this line of questioning on the grounds that why  
22 would you be asking an engineer biological questions  
23 when a biologist is sitting right here?

24 MR. RUBIN: Want me to answer?

25 CO-HEARING OFFICER BAGGETT: Sure.

1           MR. RUBIN: Because the testimony that's been  
2 provided between Phase 1 and Phase 2 has indicated that  
3 Mr. Stretars and Mr. Collins are the people that  
4 developed the proposed order for the State Water  
5 Resources Control Board, and I was trying to get to an  
6 understanding why they're asking the State Board to do  
7 what they are.

8           CO-HEARING OFFICER BAGGETT: Overruled.  
9 Continue and try to -- if they're short, move on.

10           MR. RUBIN: Mr. Stretars, you state that the  
11 Prosecution Team recognizes that abrupt termination of  
12 extractions by California American Water that are in  
13 excess of its pre-1914, riparian, and license water  
14 rights would be unreasonable from a health and safety  
15 standpoint; is that correct?

16           MR. STRETARS: Yes.

17           MR. RUBIN: Are you aware that the State Water  
18 Resources Control Board made a similar finding in Order  
19 95-10?

20           MR. STRETARS: I guess I would say yes.

21           MR. RUBIN: Would you agree the State Water  
22 Resources Control Board should not impose on California  
23 American Water a reduction in extraction of Carmel  
24 River water if the reduction would jeopardize the  
25 health and safety of the community of the Monterey

1 Peninsula?

2 MR. SATO: Objection; vague and ambiguous as  
3 to the term health and safety. I think he should  
4 define what that means for this question.

5 MR. JACKSON: I've also got an objection on  
6 the grounds it goes to the ultimate authority of the  
7 Board and its Hearing Officers. The opinion of this  
8 person on what you ought to do seems to me to be an  
9 ultimate question of fact; and that's for you, not for  
10 him, and it causes him to speculate.

11 CO-HEARING OFFICER BAGGETT: I would overrule.  
12 I assume, since it's the author of the cease and desist  
13 it would be relevant, and it's relevant for us to  
14 understand what that was based on.

15 I would ask you to define it to --

16 MR. RUBIN: Mr. Stretars, on page 6 of PT-49,  
17 the last line on page 6 of the first complete  
18 paragraph, you reference: Protect public health and  
19 safety. Do you see that reference?

20 Again, I'm talking about page 6 of your  
21 testimony, PT-49, the first complete paragraph on the  
22 page, last line references public health and safety.  
23 Do you see the reference?

24 MR. STRETARS: Okay, yes.

25 MR. RUBIN: As you use that phrase on page 6

1 of PT-49, I'm asking you to answer my question based  
2 upon that, your use of the phrase within PT-49.

3 And my question is: Would you agree the State  
4 Water Resources Control Board should not impose on  
5 California American Water a reduction in extractions of  
6 Carmel River water if the reduction would jeopardize  
7 public health and safety of the community on the  
8 Monterey Peninsula?

9 MR. STRETARS: I would answer yes.

10 MR. RUBIN: Thank you.

11 And my last set of questions: The purpose of  
12 the schedule you propose in the draft cease and desist  
13 order is to place a sense of urgency upon California  
14 American Water and the Monterey Peninsula community; is  
15 that correct?

16 MR. STRETARS: Yes. I believe I said that.

17 MR. RUBIN: And you feel a schedule is needed  
18 to emphasize that the State Water Resources Control  
19 Board expects California American Water to bring the  
20 Coastal Water Project or another alternative project to  
21 fruition within a reasonable time frame?

22 MR. STRETARS: I do.

23 MR. RUBIN: Were you present during Phase 1 of  
24 this proceeding?

25 MR. STRETARS: I was.

1           MR. RUBIN: Are you aware of the Phase 1 --  
2 excuse me. Are you aware that in Phase 1 there was  
3 undisputed testimony that since 1995 hundreds of  
4 millions of dollars have been invested by interests on  
5 the Monterey Peninsula to bring the Coastal Water  
6 Project or another alternative project to fruition  
7 within a reasonable time frame?

8           MR. STRETARS: Yes.

9           MR. RUBIN: Are you aware of the testimony  
10 that was presented in Phase 1 -- the undisputed  
11 testimony that was presented in Phase 1 reflecting the  
12 thousands of hours that have been invested since 1995  
13 by interests on the Monterey Peninsula to bring the  
14 Coastal Water Project or another alternative project to  
15 fruition within a reasonable time frame?

16           MR. SATO: I'm going to object to the  
17 question, that it's again testifying by Mr. Rubin about  
18 what took place during the Phase 1 proceeding. It's  
19 really not appropriate to ask that type of question to  
20 this witness.

21           MR. RUBIN: Mr. Baggett, Mr. Stretars has  
22 testimony, written testimony, on page 4 that directly  
23 raises this issue. And I think it's relevant tying  
24 together testimony that was presented in the first  
25 phase but gets to his statement on page 4 regarding

1 what the cease and desist order remedy is intended to  
2 do. Page 4, section paragraph, second line. It says:

3 The Prosecution Team selected a time  
4 frame of seven years to place a sense of  
5 urgency upon California American Water.

6 And I think that if you're going to base your  
7 decision on the desire of the Prosecution Team to  
8 provide a sense of urgency, it's important for you to  
9 understand if they did or did not consider some of the  
10 testimony that was presented during Phase 1.

11 MR. SATO: That's the question that he should  
12 ask, not particularly characterizing the testimony in a  
13 particular way during Phase 1. That is my objection to  
14 the way he asked the question.

15 CO-HEARING OFFICER BAGGETT: Just rephrase the  
16 question. I think it's a legitimate line of  
17 questioning. Rephrase it.

18 MR. RUBIN: Okay.

19 Mr. Stretars, does the Prosecution Team  
20 believe that the past and projected investments by the  
21 interests on the Monterey Peninsula fail to reflect a  
22 sense of urgency to address the water supply issues on  
23 the Monterey Peninsula?

24 MR. STRETARS: Yes. It's been 13 years, and  
25 you're still illegally diverting water.

1           MR. RUBIN: And you believe the fact that --  
2 you believe that fact despite the amount of time and  
3 money that has been spent and is projected to be spent?

4           MR. SATO: Objection; argumentative.

5           CO-HEARING OFFICER BAGGETT: Overruled.

6           MR. RUBIN: Could the court reporter read back  
7 the question?

8           (Record read)

9           MR. STRETARS: Yes.

10          MR. RUBIN: I have no further questions.

11          CO-HEARING OFFICER BAGGETT: Thank you. Any  
12 staff? Gary? Paul? We'll limit you to an hour.

13          CO-HEARING OFFICER WOLFF: I'll take less than  
14 an hour, absolutely.

15          Ms. Ambrosius, a few questions. The  
16 settlement agreement, which I believe is PT-48: I know  
17 you're familiar with it. Were you involved in the  
18 negotiation of it?

19          MS. AMBROSIUS: Yes, I was.

20          CO-HEARING OFFICER WOLFF: In Section II-A it  
21 refers to certain sums of money that should be paid by  
22 California American Water initially and then  
23 subsequently. Have those payments been made?

24          MS. AMBROSIUS: No, they have not.

25          CO-HEARING OFFICER WOLFF: And why is that, to

1 the best of your knowledge?

2 MS. AMBROSIUS: We are still working on  
3 negotiations on how the funding can be transferred.

4 CO-HEARING OFFICER WOLFF: Well, it's been two  
5 years, and it says the money should be transferred  
6 within 60 days. So what -- can you describe what those  
7 negotiations involve?

8 MS. AMBROSIUS: It's involved with --

9 (Conferring with counsel)

10 MS. AMBROSIUS: The negotiations are  
11 confidential.

12 (Laughter)

13 CO-HEARING OFFICER WOLFF: All right.

14 So money hasn't been paid. And do you have  
15 any anticipation at present that you can share with me  
16 as to when the money might be paid?

17 MS. AMBROSIUS: I have no idea.

18 CO-HEARING OFFICER WOLFF: All right. Moving  
19 to the next paragraph, II-B:

20 NOAA shall at its sole discretion select  
21 and prioritize the projects to be funded  
22 with the money supplied --

23 Et cetera. Is there a list of prioritized  
24 projects as to how to spend this money that been  
25 prepared by NOAA?

1 MS. AMBROSIUS: We did make up a list of  
2 potential mitigation projects but -- and we prioritized  
3 those -- but really, any projects could come in the  
4 door to be funded, if you will.

5 CO-HEARING OFFICER WOLFF: All right. So the  
6 list is not -- there is not a list at present as to how  
7 you would spend the money.

8 MS. AMBROSIUS: No.

9 CO-HEARING OFFICER WOLFF: Does the list that  
10 you prepared of potential projects cost more than the  
11 sum of money? Would it cost more to implement the full  
12 list of potential projects?

13 MS. AMBROSIUS: I believe so, but I'm not  
14 certain of that.

15 CO-HEARING OFFICER WOLFF: Let me ask the  
16 question another way. Do you believe that spending  
17 beyond the sum of money would be significantly  
18 beneficial to the steelhead in the river? And "I don't  
19 know" would be an acceptable answer.

20 MS. AMBROSIUS: Spending beyond?

21 CO-HEARING OFFICER WOLFF: Yeah, spending more  
22 money than this sum of money would provide significant  
23 benefit to the steelhead in the river.

24 MS. AMBROSIUS: If there were projects that  
25 could provide benefits in the river. They need to be,

1 you know, identified.

2 CO-HEARING OFFICER WOLFF: So you're not  
3 certain at this point in time?

4 MS. AMBROSIUS: Right.

5 CO-HEARING OFFICER WOLFF: Fair enough.  
6 That's all for you. Thank you very much.

7 I have one question for Mr. Stretars. When  
8 you were investigating this issue of sufficient water  
9 for public health and safety, did you do any -- did you  
10 or your staff do any sort of search on the web or in a  
11 database, scientific database, for basic water needs or  
12 water needs associated with public health and  
13 sanitation?

14 MR. STRETARS: We did look into the web on a  
15 lot of issues, at the Monterey Peninsula's, at the  
16 Department of Health, we looked at, just Googled  
17 general type of statements to get an idea of what was  
18 considered in the reasonable range of functional usage,  
19 so to speak.

20 CO-HEARING OFFICER WOLFF: And you found  
21 nothing you thought was worth mentioning in your  
22 testimony?

23 MR. STRETARS: Nothing -- well, again, my  
24 staff has been, some of this, the work, so I wasn't.  
25 There was numerous pieces and assembled it. I found

1 it, at that point in time we assembled it, no.

2 CO-HEARING OFFICER WOLFF: Okay. Thank you.

3 CO-HEARING OFFICER BAGGETT: Any redirect?

4 MR. SATO: I just have a few.

5 CO-HEARING OFFICER BAGGETT: Let's take ten  
6 minutes and come back with redirect.

7 (Recess)

8 CO-HEARING OFFICER BAGGETT: Okay. We're  
9 ready to go back on the record with redirect from the  
10 Prosecution Team. Proceed.

11 MR. SATO: Thank you. Just a few questions.

12 REDIRECT EXAMINATION BY MR. SATO

13 FOR THE PROSECUTION TEAM

14 MR. SATO: First of all, Mr. Stretars. You  
15 were testifying as to a level that would not jeopardize  
16 public health and safety. Do you recall that?

17 MR. STRETARS: Yes.

18 MR. SATO: Now on page 5 of your written  
19 testimony, you identify a number of 75 gallons per  
20 person per day as a level that would not jeopardize  
21 public health and safety; is that correct?

22 MR. STRETARS: That's correct.

23 MR. SATO: And so when you -- in further  
24 testimony about levels that would jeopardize public  
25 health and safety, that would be one of the operative

1 factors; is that correct?

2 MR. STRETARS: Yes.

3 MR. SATO: Now going further on your testimony  
4 on page 5, you talk about Cal Am could satisfy this  
5 health and safety requirement by first using an acre  
6 foot allotment from the Seaside Groundwater Basin and  
7 300 acre feet from the Sand City desalination project.  
8 Do you recall that --

9 MR. STRETARS: Yes.

10 MR. SATO: -- testimony?

11 Now, Mr. Laredo asked you some questions about  
12 whether or not that number in the context of that  
13 testimony should really be 94 acre feet. Do you recall  
14 that, those questions?

15 MR. STRETARS: I do.

16 MR. SATO: Now what is the difference between  
17 94 and 300 acre feet?

18 MR. STRETARS: Difference is 206 acre foot.

19 MR. SATO: And what is that 206 acre feet set  
20 aside for?

21 MR. STRETARS: It's set aside for future  
22 development of Sand City.

23 MR. SATO: So if there were a moratorium on  
24 future development in Sand City, would that 206 acre  
25 feet be available for the purpose that you identified

1 in your testimony?

2 MR. STRETARS: It would.

3 MR. SATO: Okay. So once again, that would be  
4 water that Cal Am could satisfy the health and safety  
5 requirement, correct?

6 MR. STRETARS: Correct.

7 MR. SATO: Now some questions for  
8 Ms. Ambrosius. There were some questions directed to  
9 you about instream flow recommendations related to  
10 Exhibit number PT-45. There were questions regarding  
11 the fact that the recommendations were developed in  
12 furtherance of an offstream storage project. Do you  
13 recall that, those questions?

14 MS. AMBROSIUS: Yes.

15 MR. SATO: Now does the fact that that exhibit  
16 was addressing recommendations developed in the  
17 furtherance of an offstream storage project, does that  
18 detract from their relevance to this CDO proceeding, in  
19 your opinion?

20 MS. AMBROSIUS: No, it does not.

21 MR. SATO: Okay. In fact, how do you think --  
22 if you could describe again how you think those factors  
23 are relevant for this particular proceeding?

24 MS. AMBROSIUS: What it does, it looks at what  
25 instream flows are needed for steelhead, so we can look

1 at that and compare it to what might be coming back  
2 into the river from the CDO.

3 MR. SATO: There was some questions also  
4 directed to you about the 2006 settlement which was  
5 Exhibit number PT-48. Do you recall questions  
6 regarding the settlement agreement?

7 MS. AMBROSIUS: Yes.

8 MR. SATO: Now, is it fair to state that this  
9 agreement provides for Cal American to pay money into  
10 a -- well, pay money into some kind of fund but does  
11 not provide any reduction of illegal diversions?

12 MS. AMBROSIUS: That's correct.

13 MR. SATO: So in other words -- I mean how  
14 would you characterize what is being done by the cease  
15 and desist order versus what is being done pursuant to  
16 the agreement with Cal American? Are they substitutes  
17 for one another? Are they intended to be  
18 complementary?

19 MR. RUBIN: I object to the question. I think  
20 it calls for speculation.

21 CO-HEARING OFFICER BAGGETT: Sustained. Could  
22 you rephrase, be more specific. Ask one agreement at a  
23 time? It was compound.

24 MR. SATO: All right. Trying to make that  
25 more of a background-type of question. All right.

1           With regard to settlement agreement, the 2006  
2 settlement agreement, and the requirements that are set  
3 forth in the proposed cease and desist order, do you  
4 see that those two documents together are complementary  
5 in terms of what they intend to accomplish with regard  
6 to the protection of the steelhead fishery in the  
7 Carmel River?

8           MR. RUBIN: I'm going to object to the  
9 question again. I probably could have raised this  
10 objection on the first question that was asked.

11           This is, I think, a question that could have  
12 been asked or presented in the written testimony. It  
13 wasn't. I think Mr. Sato is using this as an  
14 opportunity to further elaborate information that he  
15 could have elicited through direct.

16           It's going to open up potentially the recross  
17 to a host of issues. Again, it's beyond I think -- or  
18 this falls within what should have been brought out  
19 through written testimony or through questions that  
20 Mr. Sato could have asked under direct.

21           CO-HEARING OFFICER BAGGETT: Mr. Jackson?

22           MR. JACKSON: Yes, Mr. Baggett. We just sat  
23 through a very, very long cross-examination in which  
24 you were quite -- and maybe appropriately, given the  
25 stakes -- lenient with the kinds of questions that were

1 asked. It opened up a whole bundle of things, and if  
2 Mr. Sato is going to ask to clear some of them up, it  
3 may shorten this circumstance, but clearly it's things  
4 that were covered in cross-examination, and redirect is  
5 appropriate.

6 CO-HEARING OFFICER BAGGETT: I would overrule;  
7 but likewise, there will be an opportunity on recross,  
8 so we'll be here for a while.

9 Take it away, Mr. Sato.

10 MR. SATO: Could you reread the question  
11 please?

12 (Record read)

13 MS. AMBROSIUS: I would say yes, they would be  
14 complementary rather than substitutes.

15 MR. SATO: I think that during your  
16 cross-examination by counsel for Cal American, he  
17 seemed to imply that Cal Am's illegal diversions are  
18 having no adverse impacts on the threatened Carmel  
19 River steelhead. Would you agree that Cal Am's illegal  
20 diversions still in fact are having an adverse impact  
21 upon the Carmel River steelhead?

22 MR. RUBIN: I'm going to object to the  
23 question on the basis that it's ambiguous and it's  
24 trying to state cross-examination's intent.

25 CO-HEARING OFFICER BAGGETT: I would sustain

1 the objection. Would you rephrase your question?

2 MR. SATO: Sure.

3 Is it your testimony that Cal Am's illegal  
4 diversion, that is diversions in excess of 3,376 acre  
5 feet per annum, are having adverse effects on the  
6 threatened Carmel River steelhead?

7 MS. AMBROSIUS: Yes.

8 MR. SATO: And in your professional opinion,  
9 would implementing the proposed provisions of the cease  
10 and desist order proposed by the Prosecution Team with  
11 the modifications that you suggested likely have a  
12 significant beneficial effect on the Carmel River  
13 steelhead?

14 MS. AMBROSIUS: Yes, I believe that they would  
15 be beneficial.

16 MR. SATO: Okay. And that would be as a  
17 result of leaving more water in the river for steelhead  
18 habitat?

19 MS. AMBROSIUS: Yes.

20 MR. SATO: Finally, I just wanted to direct  
21 your attention to what was marked as Cal American  
22 Exhibit or CAW-40. It was the chart that showed the  
23 adult steelhead at the San Clemente Dam. Do you have  
24 that exhibit?

25 MS. AMBROSIUS: Yes.

1           MR. SATO: Now I notice that this chart as you  
2 testified seems to end approximately 2002. Is that  
3 your view of the chart?

4           MS. AMBROSIUS: Yes.

5           MR. SATO: Can you tell us if you have  
6 information about what the adult counts have been after  
7 2002?

8           MS. AMBROSIUS: Yes, I have in my testimony on  
9 page 4, I do list the population numbers that were  
10 taken, the counts that were taken at San Clemente Dam.

11           In 2004 it was 388. In 2005, 328. In 2006,  
12 368. In 2007, it was only 222 adults. And this year,  
13 2008, there is 412.

14           MR. SATO: All right. So that the linear  
15 regression that's suggested by this particular exhibit,  
16 CAW-40, at least as it applies beyond -- at least as it  
17 applies between 1990 to 2002 would be inaccurate for  
18 the period of time 2002 to present; is that correct?

19           MS. AMBROSIUS: Yes.

20           MR. SATO: No further questions.

21           CO-HEARING OFFICER BAGGETT: Thank you. Okay.  
22 Recross, Planning and Conservation League. No? Sierra  
23 Club? No? Carmel River Steelhead Association.

24           RE-CROSS-EXAMINATION BY MR. JACKSON  
25           FOR CARMEL RIVER STEELHEAD ASSOCIATION

1           MR. JACKSON: Mr. Stretars, you were asked a  
2 series of questions on cross-examination by Cal Am  
3 about the fact that if -- whether you had any knowledge  
4 as to whether or not if Cal Am ceased its trespass and  
5 taking water without right from the Carmel River  
6 aquifer others would suddenly take the water without  
7 right.

8           MR. RUBIN: I'm going to object to the  
9 question.

10           CO-HEARING OFFICER BAGGETT: Sustained. You  
11 can -- Mr. Jackson, your questions are confined to  
12 redirect. I fail to see how going back to his  
13 testimony, not the redirect -- you can recross on any  
14 questions just asked by the prosecution.

15           MR. JACKSON: Okay. I'll let that go.

16           CO-HEARING OFFICER BAGGETT: Public Trust  
17 Alliance? Narrow scope here. Monterey Peninsula Water  
18 Management District.

19           MR. LAREDO: We pass.

20           CO-HEARING OFFICER BAGGETT: Pebble Beach?  
21 Any of the cities? Monterey County Hospitality  
22 Association? No? Mr. Rubin.

23           MR. RUBIN: Very briefly, just couple  
24 questions for Ms. Ambrosius.

25           RE-CROSS-EXAMINATION BY MR. RUBIN

1 FOR CALIFORNIA AMERICAN WATER COMPANY

2 MR. RUBIN: Ms. Ambrosius, you were asked on  
3 redirect a couple of questions regarding the population  
4 of steelhead since 2002; is that correct?

5 MS. AMBROSIUS: Yes.

6 MR. RUBIN: Do you know what levels California  
7 American Water has been pumping at since 2002?

8 MS. AMBROSIUS: How much water?

9 MR. RUBIN: Yes.

10 MS. AMBROSIUS: They've been taking -- they  
11 can take a maximum 11,280 -- 11285.

12 MR. RUBIN: Do you know if California American  
13 Water has increased its pumping since 2002 over the  
14 average between 1995 and the present?

15 MS. AMBROSIUS: I don't know that.

16 MR. RUBIN: And since 2002, there were a  
17 number of years in which the water year type was  
18 classified as critical; is that correct?

19 MS. AMBROSIUS: Critically dry?

20 MR. RUBIN: Yes.

21 MS. AMBROSIUS: I think there were some.

22 MR. RUBIN: And some, does that mean more than  
23 one?

24 MS. AMBROSIUS: I believe so.

25 MR. RUBIN: Thank you.

1 No further questions.

2 CO-HEARING OFFICER BAGGETT: Ernie? Paul?

3 CROSS-EXAMINATION BY MR. TAYLOR

4 FOR THE HEARING TEAM

5 CHIEF COUNSEL TAYLOR: I have a couple  
6 questions for Mr. Stretars. And I'm going to revisit  
7 something you've talked about a couple times,  
8 Mr. Stretars, at the bottom of page 5, talking about  
9 your calculation of the amount of water needed to  
10 provide for public health and safety in the Monterey  
11 Peninsula. You have a figure of 9,367 acre feet  
12 annually.

13 And what my question is, for clarification for  
14 the benefit of the hearing team, is that Mr. Laredo  
15 questioned you, it was apparent that this number does  
16 not factor in the needs of industry and the hospitality  
17 industry; is that correct?

18 MR. STRETARS: Population aggregate is --  
19 sorry. Now the mic's on. We use the -- what do you  
20 call it -- the census population value, the presumed  
21 residential -- resident population, from which we then  
22 factor to some extent industry and commercial. It does  
23 does not figure the transient tourist population.

24 CHIEF COUNSEL TAYLOR: Not including the  
25 transient population.

1 MR. STRETARS: Right.

2 CHIEF COUNSEL TAYLOR: Mr. Wolff, do you want  
3 to follow up on that?

4 CO-HEARING OFFICER WOLFF: No, I believe I  
5 understood the testimony earlier that, you know, you  
6 took the resident population and multiplied by 75  
7 gallons per day, that number you got. That means the  
8 75 includes water for the business and everything in  
9 the area, not just water used in the homes, right?  
10 That was how you did your calculation?

11 MR. STRETARS: I would say, yeah, for the most  
12 part. I think it's a little shy because of the  
13 business aspect it. We're looking at a population not  
14 knowing individual business, but does not include the  
15 transient population.

16 CHIEF COUNSEL TAYLOR: To the extent that you  
17 have a resident working in the hospitality industry,  
18 they would be included within this number?

19 MR. STRETARS: Yeah, when you're figuring a  
20 population, that 75 gallons a day per person, it's the  
21 same for that person whether they're at home or  
22 business or whatever, they're carrying that quantity  
23 with them, yes.

24 CHIEF COUNSEL TAYLOR: Thank you.

25 CO-HEARING OFFICER BAGGETT: Other questions,

1 then move the exhibits? And Cal Am has some exhibits.

2 MR. SATO: The Prosecution Team moves in the  
3 testimony of Ms. Ambrosius and Mr. Stretars and the  
4 exhibits.

5 MR. RUBIN: Before you rule on that, I would  
6 like to renew my objection that I raised earlier  
7 regarding Mr. Stretars' testimony. I asked  
8 Mr. Stretars a number of different questions that I  
9 believe somebody who is familiar with water supply  
10 planning operations and distribution systems should  
11 know.

12 I think Mr. Stretars' testimony indicates that  
13 his employment with the State Water Resources Control  
14 Board has removed him from the area of expertise that's  
15 required to testify, and his personal knowledge is  
16 lacking. So I would object to the admission of pages 3  
17 through 6 in PT-49.

18 CO-HEARING OFFICER BAGGETT: We'll note the  
19 objections but allow the evidence in.

20 (The Prosecution Team Exhibits were  
21 admitted into evidence.)

22 CO-HEARING OFFICER BAGGETT: And Cal Am, do  
23 you have some exhibits?

24 MR. RUBIN: Yes, California American Water had  
25 marked Exhibits 38 through 41. We do move those in.

1 We request that they be admitted into evidence. We  
2 want to make sure that PT -- excuse me -- Exhibit 41, I  
3 don't know if I referenced that specifically during the  
4 cross-examination, but it is the section from  
5 California Code of Regulations, Title 23.

6 CO-HEARING OFFICER BAGGETT: Any objection?  
7 If not, so in. Thank you.

8 (Exhibits CAW 38-41 were admitted into  
9 evidence.)

10 CO-HEARING OFFICER BAGGETT: So this panel is  
11 finished. Now let's move on. As I recall, we said  
12 we'd move on to Mr. Kassel.

13 JAMES KASSEL

14 Called by CALIFORNIA AMERICAN WATER COMPANY

15 DIRECT EXAMINATION BY MR. RUBIN

16 MR. RUBIN: Good afternoon. Jon Rubin for  
17 California American Water. We've asked for the  
18 appearance of Mr. Kassel. Would you please state and  
19 spell your name for the record.

20 MR. KASSEL: My name is James Kassel,  
21 K-a-s-s-e-l.

22 MR. RUBIN: Mr. Kassel, have you taken the  
23 oath?

24 MR. KASSEL: Yes, I have.

25 MR. RUBIN: I have a number of questions.

1 Hopefully we can go through these fairly quickly.

2 Mr. Kassel, does the State Water Resources  
3 Control Board have formal procedure they must follow  
4 prior to the issuance of a draft cease and desist  
5 order?

6 MR. KASSEL: There is no formal written  
7 procedure.

8 MR. RUBIN: Mr. Kassel, you approved the  
9 issuance of the draft cease and desist order?

10 MR. KASSEL: Yes, I did.

11 MR. RUBIN: After your approval, you sent it  
12 to Mr. Kent Turner on or about January 15, 2008; is  
13 that correct?

14 MR. KASSEL: That's correct.

15 MR. RUBIN: When you sent the draft cease and  
16 desist order to Mr. Turner, did you prepare a cover  
17 letter?

18 MR. KASSEL: I did.

19 MR. RUBIN: In your cover letter, you  
20 explained to Mr. Turner why you approved the issuance  
21 of the draft cease and desist order?

22 MR. KASSEL: It does list the reasons why,  
23 yes.

24 MR. RUBIN: And you explained in that cover  
25 letter that extractions of Carmel River water by

1 California American Water which were in excess of its  
2 pre-1914, riparian, and licensed water rights were  
3 causing continued harm to public resources; is that  
4 correct?

5 MR. KASSEL: Yes.

6 MR. SATO: Objection. I'm going to object at  
7 this point because it sounds like what Mr. Rubin is  
8 trying to do now is revisit Phase 1 of this proceeding.  
9 So I'll just say this is my cautionary objection; if he  
10 continues, I'll object every time.

11 But I think that, you know, if we're going to  
12 start going down Phase 1 issues, this is the wrong time  
13 and the wrong -- to do that.

14 CO-HEARING OFFICER BAGGETT: Mr. Rubin?

15 MR. RUBIN: The question that Mr. Sato is  
16 raising an objection for was foundational, and it was  
17 focused on the explanation that Mr. Kassel provided  
18 regarding the effects of diversions in excess of the  
19 water rights on public resources. And I think that is  
20 an issue that's relevant to Phase 2.

21 My questions were going to focus on the public  
22 resource side.

23 CO-HEARING OFFICER BAGGETT: Continue.

24 MR. RUBIN: Mr. Kassel, does the draft cease  
25 and desist order explain the harm the Prosecution Team

1 believed were being caused to public resources by  
2 California American Water diversions?

3 MR. KASSEL: Specifically, I believe it just  
4 talks about -- let's see.

5 MR. RUBIN: Just a yes or no whether the draft  
6 cease and desist order explains the harm the  
7 Prosecution Team believed was being caused to Public  
8 Trust resources by diversions by California American  
9 Water?

10 MR. KASSEL: I believe it references harm to  
11 the Public Trust resources.

12 MR. RUBIN: And more specifically, if this  
13 will help you, is the explanation presented in  
14 paragraph 8 in finding 2 of the draft cease and desist  
15 order?

16 MR. KASSEL: Yes.

17 MR. RUBIN: Is there anywhere else in the  
18 draft cease and desist order which explains the alleged  
19 harm California American Water might be causing to  
20 public resources by extracting Carmel River water in  
21 excess of its pre-1914, riparian, and licensed water  
22 rights?

23 MR. KASSEL: I don't believe so.

24 MR. RUBIN: And Mr. Kassel, who prepared the  
25 draft cease and desist order?

1           MR. KASSEL: The draft cease and desist order  
2 was prepared by my enforcement staff under direction of  
3 myself and Mr. O'Hagan.

4           MR. RUBIN: Thank you. With whom did you  
5 discuss the draft cease and desist order before you  
6 sent it to Mr. Turner on January 15, 2008?

7           MR. KASSEL: I discussed it with Mr. O'Hagan  
8 and my enforcement staff.

9           MR. RUBIN: Was there anyone else you talked  
10 to about it?

11          MR. KASSEL: I did provide a copy of the draft  
12 cease and desist order before I issued it to my  
13 supervisor, Ms. Whitney, and also to her supervisor,  
14 Mr. Howard, because of the delegation of authority to  
15 me by the Board to inform my supervisors of  
16 controversial issues.

17          MR. RUBIN: Okay. Nobody else -- you didn't  
18 discuss the draft cease and desist order with anyone  
19 else prior to January 15, 2008.

20          MR. KASSEL: Yes, I did forget about my  
21 counsel.

22          MR. RUBIN: Okay. And with whom did you  
23 discuss the draft cease and desist order since  
24 February 4, 2008?

25          MR. KASSEL: The date I issued it, I did call

1 Mr. Berger from the Monterey Peninsula Water Management  
2 District and Mr. Turner from Cal Am.

3 MR. RUBIN: Is there anyone else that you  
4 talked to regarding the draft cease and desist order  
5 since February 4, 2008?

6 MR. KASSEL: Since issuance, yes. Actually,  
7 numerous people. Our officer of public affairs, a  
8 gentleman from the PUC, quite a few people since  
9 issuance.

10 MR. RUBIN: Did you speak to anyone else on  
11 the enforcement team about the draft cease and desist  
12 order since February 4, 2008?

13 MR. KASSEL: Yes.

14 MR. RUBIN: Did you speak to anybody who is  
15 employed by the State Water Resources Control Board,  
16 other than those on the Prosecution Team, about the  
17 draft cease and desist order since February 4, 2008?

18 MR. KASSEL: Other than the enforcement team,  
19 I can't recall anyone.

20 MR. RUBIN: Thank you.

21 Now, Mr. Kassel, you've been working -- excuse  
22 me. How long have you been employed by the State Water  
23 Resources Control Board?

24 MR. KASSEL: I began in 1985 with State Water  
25 Resources Control Board. I did two years at the

1 Regional Board in Sacramento, but most of my time with  
2 the State Board.

3 MR. RUBIN: And during that time, you've been  
4 with the Division of Water Rights; is that correct?

5 MR. KASSEL: I have. Not the entire time.

6 MR. RUBIN: How long have you been working  
7 with the Division of Water Rights?

8 MR. KASSEL: There were two separate occasions  
9 totaling approximately 11 1/2 years.

10 MR. RUBIN: Is Ms. Victoria Whitney the Deputy  
11 Director of the Division of Water Rights for the State  
12 Water Resources Control Board?

13 MR. KASSEL: She is.

14 MR. RUBIN: And Ms. Whitney oversees all  
15 aspects of the Division of Water Rights?

16 MR. KASSEL: She does.

17 MR. RUBIN: And the Division of Water Rights  
18 is organized into three sections?

19 MR. KASSEL: That's correct.

20 MR. RUBIN: And the three sections within the  
21 Division of Water Rights are Permitting, Hearing and  
22 Special Programs, and Enforcement?

23 MR. KASSEL: That's correct.

24 MR. RUBIN: Are you the Assistant Deputy  
25 Director of the State Water Resources Control Board

1 Division of Water Rights?

2 MR. KASSEL: Yes, I am.

3 MR. RUBIN: How long have you been the  
4 Assistant Deputy Director of the State Water Resources  
5 Control Board Division of Water Rights?

6 MR. KASSEL: I believe it's a little shy of  
7 three years.

8 MR. RUBIN: Do you have a specific date you  
9 became the Assistant Deputy Director?

10 MR. KASSEL: Yes. September 12, 2005.

11 MR. RUBIN: As the Assistant Deputy Director  
12 of the State Water Resources Control Board, Division of  
13 Water Rights, do you report to Ms. Whitney?

14 MR. KASSEL: I do.

15 MR. RUBIN: And as the Assistant Deputy  
16 Director of the State Water Resources Control Board,  
17 Division of Water Rights, you oversee all three  
18 sections of the Division, Permitting, Hearings and  
19 Special Programs, and Enforcement?

20 MR. KASSEL: Yes, I do. I should state that  
21 in enforcement cases there is a separation of functions  
22 where I do not oversee the hearing unit, for instance.

23 MR. RUBIN: And who supervises the hearing  
24 unit in those circumstances?

25 MR. KASSEL: Ultimately, Ms. Whitney.

1           MR. RUBIN: So in this circumstance,  
2 Ms. Whitney is overseeing the Prosecution Team?

3           MR. KASSEL: No, she's not.

4           MR. RUBIN: Who is overseeing the Prosecution  
5 Team in this instance?

6           MR. KASSEL: I am.

7           MR. RUBIN: And are you reporting to anybody  
8 within the Division of Water Rights?

9           MR. KASSEL: No, I am not.

10          MR. RUBIN: Did you sign a June 2nd, 2006  
11 letter from Ms. Whitney to representatives of  
12 California American Water and the Monterey Peninsula  
13 Water Management District which was previously marked  
14 as Exhibit CAW-21?

15          MR. KASSEL: Yes, I did.

16          MR. RUBIN: And did Ms. Kathy Mrowka prepare  
17 the June 7, 2006 letter, Exhibit CAW-21?

18          MR. KASSEL: I believe she did.

19          MR. RUBIN: Why did Ms. Whitney not sign the  
20 June 7, 2006 letter, Exhibit CAW-21?

21          MR. KASSEL: I can't recall specifically, but  
22 my assumption is she was not available for signature.

23          MR. RUBIN: Are you aware that the State Water  
24 Resources Control Board, Division of Water Rights  
25 withdrew the June 6th -- excuse me -- June 7, 2006

1 letter, Exhibit CAW-21?

2 MR. KASSEL: No. I'm not aware of that.

3 MR. RUBIN: Is it common for Division of Water  
4 Rights to withdraw a letter?

5 MR. KASSEL: It happens on occasion.

6 MR. RUBIN: Are you aware that Mr. Stretars  
7 prepared written testimony for this phase of the  
8 proceeding?

9 MR. KASSEL: Yes.

10 MR. RUBIN: Did you review Mr. Stretars'  
11 written testimony before it was filed with the State  
12 Water Resources Control Board?

13 MR. KASSEL: I did review his testimony, yes.

14 MR. RUBIN: Did you suggest Mr. Stretars make  
15 any changes to his written testimony before it was  
16 filed with the State Water Resources Control Board?

17 MR. KASSEL: I can't recall exactly, but I  
18 believe I may have provided some editorial comments.

19 MR. RUBIN: But you didn't provide any  
20 substantive changes to his testimony?

21 MR. KASSEL: No.

22 MR. RUBIN: Does Order 95-10 impose on  
23 California American Water an extract limit of  
24 11,285 acre feet of water from the Carmel River?

25 MR. KASSEL: Yes, it does.

1           MR. RUBIN: Does Mr. Stretars explain that  
2 water recovered from the Seaside Basin through the ASR  
3 Phase 1 project should count towards the limit set in  
4 Order 95-10?

5           MR. KASSEL: Could you restate the question,  
6 please?

7           MR. RUBIN: Does Mr. Stretars explain that the  
8 water recovered from the Seaside Basin through the ASR  
9 Phase 1 project should count towards the 11,285 acre  
10 foot limit set in Order 95-10?

11          MR. SATO: I'm going to object. I don't know  
12 the purpose of having Mr. Kassel try to regurgitate  
13 Mr. Stretars' testimony, if that's the intent here. I  
14 don't know where he's going.

15          MR. RUBIN: I'm trying to lay some foundation  
16 to a question that Mr. Stretars could not answer and  
17 I'm hoping that Mr. Kassel can.

18          CO-HEARING OFFICER BAGGETT: Very good,  
19 overruled. Continue.

20          MR. KASSEL: I believe that is correct.

21          MR. RUBIN: Does Mr. Stretars explain that  
22 water available from the Sand City desalination plant  
23 should count towards the 11,285 acre foot extraction  
24 limit stated in Order 95-10?

25          MR. KASSEL: Could you restate the question

1 again?

2 MR. RUBIN: Sure. Do you know if Mr. Stretars  
3 explains that water available from the Sand City desal  
4 plant should count towards the 11,285 acre foot  
5 extractions limit set in Order 95-10?

6 MR. KASSEL: I believe his testimony states  
7 that it should initially until Sand City needs further  
8 water.

9 MR. RUBIN: Do you know whether the State  
10 Water Resources Control Board previously refused to  
11 count towards the 11,285 acre foot extraction limit set  
12 in Order 95-10 water developed or recovered from the  
13 ASR Phase 1 project?

14 MR. KASSEL: Can you please restate the  
15 question?

16 MR. RUBIN: Do you know if the State Water  
17 Resources Control Board previously refused to count  
18 towards the 11,285 acre feet extraction limit set in  
19 Order 95-10 water recovered through the ASR Phase 1  
20 project?

21 MR. KASSEL: I -- I'm not aware the State  
22 Board refused to count that.

23 MR. RUBIN: Do you know of a letter that  
24 former Executive Director Celeste Cantu wrote regarding  
25 ASR Phase 1 project?

1 MR. SATO: Objection; vague and ambiguous.

2 CO-HEARING OFFICER BAGGETT: Please answer the  
3 question; overruled.

4 MR. KASSEL: I believe I've recently become  
5 aware of that letter, if it's the same one you're  
6 referring to.

7 MR. RUBIN: Mr. Kassel, do you know whether  
8 the State Water Resources Control Board refused to  
9 count towards the 11,285 acre foot extraction limit set  
10 in Order 95-10 water developed through the City of Sand  
11 City desal plant?

12 MR. KASSEL: I'm not sure I agree with the  
13 terminology of refusing that you're using.

14 MR. RUBIN: Are you aware of a letter that  
15 former Executive Director Celeste Cantu wrote regarding  
16 the use of City of Sand City desal plant water?

17 MR. KASSEL: Yes.

18 MR. RUBIN: When was that letter issued?

19 MR. KASSEL: I believe January 31st, 2006.

20 MR. RUBIN: And what do you believe  
21 Ms. Celeste Cantu said in that letter regarding the use  
22 of Sand City desal plant water?

23 MR. SATO: Objection; the document speaks for  
24 itself. What he believes it says is irrelevant.

25 CO-HEARING OFFICER BAGGETT: That's true.

1 That's sustained. Rephrase the question, if there is  
2 one. You have the document.

3 MR. RUBIN: Mr. Kassel, are you aware of any  
4 protests filed by NOAA Fisheries against the  
5 application Monterey Peninsula Water Management  
6 District for ASR Phase 1?

7 MR. KASSEL: I'm afraid I'm not aware of that.

8 MR. JACKSON: Mr. Baggett, this is an  
9 application in a different case, ASR Phase 1, and we're  
10 asking questions about it? It's not relevant to this  
11 hearing under the rulings that you previously  
12 established.

13 CO-HEARING OFFICER BAGGETT: I think we  
14 determined that those projects are water supply, meant  
15 to be water supply projects to offset some of the  
16 overdraft. So I think they are relevant. Mr. Rubin?

17 MR. RUBIN: I don't have any further questions  
18 based upon the response Mr. Kassel provided.

19 Mr. Kassel, Mr. Stretars testified that the  
20 Prosecution Team expects California American Water to  
21 further reduce extractions rather than operate at the  
22 status quo. Do you recall that?

23 MR. KASSEL: Yes.

24 MR. RUBIN: Does Mr. Stretars properly express  
25 the expectations of the Prosecution Team?

1 MR. KASSEL: Yes.

2 MR. RUBIN: Are you part of the Prosecution  
3 Team?

4 MR. KASSEL: Yes, I am.

5 MR. RUBIN: Do you consider the status quo to  
6 include mitigation measures required under Order 95-10?

7 MR. KASSEL: Yes, I do.

8 MR. RUBIN: Do you consider the status quo to  
9 include riparian corridor improvements undertaken by  
10 Monterey Peninsula Water Management District as well as  
11 by others?

12 MR. KASSEL: If that's part of Order 95-10,  
13 yes.

14 MR. RUBIN: If it's not part of Order 95-10,  
15 would you consider the status quo to include riparian  
16 corridor improvements that have been undertaken by the  
17 Monterey Peninsula Water Management District as well as  
18 others?

19 MR. KASSEL: I suppose if it has -- if it's  
20 being done, yes, I do.

21 MR. RUBIN: Do you consider the status quo to  
22 include the existing regulatory oversight of California  
23 American Water extractions by NOAA Fisheries?

24 MR. KASSEL: Yes.

25 MR. RUBIN: And do you consider the status quo

1 to include the existing regulatory oversight of  
2 California American Water's extraction by the  
3 California Department of Fish and Game?

4 MR. KASSEL: Yes.

5 MR. RUBIN: Do you consider the status quo to  
6 include the existing regulatory oversight of California  
7 American Water's extractions by the United States Fish  
8 and Wildlife Service?

9 MR. KASSEL: Yes.

10 MR. RUBIN: Do you consider the status quo to  
11 include the significant efforts by the citizens of the  
12 Monterey Peninsula to restrict their water use to a  
13 level well below that in almost any other community in  
14 California?

15 MR. SATO: Objection; testifying again by  
16 counsel. It's not really a question. Argumentative.

17 CO-HEARING OFFICER BAGGETT: Sustained.

18 MR. RUBIN: I have no further questions.  
19 Thank you.

20 CO-HEARING OFFICER BAGGETT: Any questions  
21 from any party? Approach, if you have one. Staff? I  
22 guess there is nothing to enter into -- no exhibits?  
23 So you are finished, unless you have redirect. Thank  
24 you.

25 Let's move to Planning and Conservation

1 League, and that should -- we should be able to get  
2 this one done today, right?

3 MR. MINTON: I'm Jonas Minton representing the  
4 Planning and Conservation League. The case we will  
5 present, both through direct testimony of our one  
6 witness and through cross-examination of other  
7 witnesses, will make four points:

8 The first point is that there now exists a  
9 suite of potential projects that will allow Cal Am to  
10 comply with water Order 95-10.

11 Our second point is that implementation of  
12 these projects would be facilitated by cooperation  
13 among the water and wastewater agencies in the Monterey  
14 region.

15 Our third point is that implementation of  
16 these projects would increase the costs to local  
17 ratepayers, and these additional cost impacts have been  
18 a disincentive to cooperation.

19 Our fourth and last point is that the schedule  
20 of phased reductions in the draft cease and desist  
21 order is necessary to motivate parties within the  
22 Monterey region in order to implement these projects  
23 despite their additional costs.

24

25

1           With that, we would call our witness, Steven  
2 Kasower.

3                                 STEVEN KASOWER, PhD

4           Called by PLANNING AND CONSERVATION LEAGUE

5                                 DIRECT EXAMINATION BY MR. MINTON

6           MR. MINTON:  Would you state your name and  
7 address.

8           DR. KASOWER:  My name is Steven Kasower.  
9 K-a-s-o-w-e-r.  And my address is 1720 Q Street,  
10 Sacramento, 95811.

11          MR. MINTON:  Did you take the oath?

12          DR. KASOWER:  I did indeed.

13          MR. RUBIN:  Did you prepare Exhibit PCL-1, and  
14 is it a true and correct copy of your bio-biography?

15          DR. KASOWER:  Yes.

16          MR. MINTON:  Did you prepare PCL Exhibit 2,  
17 and is it a true and correct copy of your written  
18 testimony in this matter?

19          DR. KASOWER:  Yes.

20          MR. MINTON:  And was Exhibit PCL-3 prepared  
21 under your direction?

22          DR. KASOWER:  Yes.  I worked on that with some  
23 of the consultants and the members of the Regional  
24 Plenary Oversight Group.

25          MR. MINTON:  Please very briefly describe your

1 qualifications and expertise relative to this matter.

2 DR. KASOWER: I've been working in the water  
3 policy and technical arena for 30 years. I spent quite  
4 a few years at the California Department of Water  
5 Resources as a senior economist and worked on  
6 implementing the first water recycling program.

7 I spent a number of years on the San Joaquin  
8 Valley Drainage Program with the mid Pacific region of  
9 the US Bureau of Reclamation. At times I spent about  
10 five years as the planning officer for the United  
11 States Bureau of Reclamation in southern California  
12 responsible for regional water projects, water  
13 recycling projects, stormwater reuse projects, either.

14 And for about four years, I was working for  
15 the Commissioner of Reclamation in Denver at the  
16 Technical Services Center in the water treatment  
17 engineering and research group and investigating a  
18 request from Congress looking at the role of advanced  
19 treatment technologies in developing new water supplies  
20 in the west, and my jurisdiction at that time was the  
21 17 western states.

22 I am presently a senior research economist  
23 with the Center For Integrated Water Research of the  
24 University of California, Santa Cruz. And at that  
25 campus, I am a faculty member in the Environmental

1 Studies Department.

2 MR. MINTON: Would you please summarize your  
3 written testimony?

4 DR. KASOWER: My testimony describes a  
5 regional process for identifying an alternative water  
6 supply for the Monterey region that could solve the  
7 Carmel River issues, could solve the Seaside  
8 Groundwater adjudication questions, and any other  
9 assorted vexing resource problems that could arise or  
10 have arisen in the Monterey region like seawater  
11 intrusion in the Salinas basin and stormwater runoff in  
12 Pacific Grove, that which I call urban slobber.

13 Originally, the California Division of  
14 Ratepayer Advocates of the California Public Utilities  
15 Commission engaged our Center of Integrative Water  
16 Research to identify this regional project using  
17 approaches that we used and I've used in the past in  
18 southern California and the 17 western states.

19 And my testimony describes that process  
20 whereby in January 2007 we established kind of an  
21 open-door dialogue table and invited at the time water  
22 managers and local elected officials and state  
23 officials and any individuals who were interested in  
24 water issues in the Monterey area.

25 I really was surprised that we generally get

1 about 40 to 60 people at that table, and we process on  
2 a monthly basis a dialogue about water projects and  
3 water components. We agreed that we would identify a  
4 suite of projects that was generally based on projects  
5 that agencies in the area had been studying in the  
6 past.

7 So we were not going to reinvent any wheels;  
8 what we thought we would do is reknit them together and  
9 see how they worked in synergistic fashion.

10 We set a rather ambitious goal of resolving  
11 the questions and coming up with an environmental  
12 analysis that would satisfy the CEQA process within  
13 12 months.

14 We rallied around that. And when I say we,  
15 the testimony describes the fact that amongst these 40  
16 folks, there's a quite diverse group. And of course  
17 the first few months we spent describing for each other  
18 what our perspectives were and learning maybe not to  
19 agree -- I don't think in Monterey folks like to  
20 agree -- but learning the -- learning a sense of each  
21 other's perspectives and what we could expect from each  
22 other.

23 And in fact, our goal was met. We were, for a  
24 moment in time, quite coordinated. We raised about a  
25 million seven, \$1,700,000, did the environmental work

1 and contributed that work to the Coastal Water Project  
2 EIR process that is now being conducted by the Public  
3 Utilities Commission Energy Division. So we did get  
4 our work in on time and on budget.

5 The testimony had one other point, and I'll  
6 add it since obviously I seem to have a little free  
7 time here this afternoon. And that is that at the  
8 moment we got this together we had a very nice  
9 collaboration of agencies.

10 We had Cal Am, a great investor in this  
11 process, financial and personnel. We had the Monterey  
12 Peninsula Water Pollution Control Agency, who  
13 contributed some funds. And the Marina Coast Water  
14 District who contributed funds, and that's where we got  
15 the money to hire the consultants to work with our  
16 study team and put this thing together.

17 MR. MINTON: Does your effort include the  
18 identification of a so-called fast track process? And  
19 if so, would you explain that?

20 DR. KASOWER: Yes. When we completed the  
21 environmental documentation work, which was about a few  
22 months ago -- actually it was June, in June; so it  
23 wasn't that many months ago -- we set our course on the  
24 next step, and the next step is a strategic  
25 implementation plan for our suite of regional projects.

1           And that strategic implementation plan  
2 includes a fast track evaluation of what water supplies  
3 we could get in the fast track to supplant the Carmel  
4 River water diversions and augment the Seaside Basin.

5           Presently, I am shopping for financing of that  
6 strategic implementation plan, and I have -- I have a  
7 requirement. I can get -- let me try to describe this.

8           I can get the money from agencies, but the  
9 problem is that not all the agencies want to put money  
10 in if the other agency is putting money in.

11           So I want everybody to kind of come along  
12 together, and that's the task. That has been the task  
13 for the last year. And it's working. It waxes and  
14 wanes in its successes and failures.

15           So presently we are focused to get the  
16 strategic implementation plan, and over the next few  
17 weeks I expect to get it funded, and I'm looking for  
18 about \$3- or \$400,000 to do it. I'm pretty optimistic  
19 about that.

20           MR. MINTON: For this suite of potential  
21 projects, what would be the total annual yield of all  
22 of those projects?

23           DR. KASOWER: When you add them all up, it's  
24 about 29,700 acre feet. It includes an expansion of  
25 the Castroville Seawater Intrusion Project irrigation,

1 includes bringing an increased hydraulic balance into  
2 the Salinas Basin, the creation of inverse seawater  
3 barrier, the extraction of seawater and/or brackish  
4 water through vertical wells, the treatment of that  
5 water, and blending of that water into river water from  
6 the Salinas River and on into the Peninsula.

7           The fast track water looks more like it is  
8 going to be a combination of some groundwater from the  
9 Salinas Basin close to Marina and the Salinas River.  
10 And we're working on those discussions.

11           And there are a lot of political sensitivities  
12 in moving water around -- besides, I don't have to tell  
13 you Board Members, the legal basis of moving that water  
14 around. So we're careful about working that through,  
15 and we are in the process of discussing with  
16 agriculture, with the different parties, about what  
17 that fast track and what that regional component could  
18 be and when we could begin to actually implement those  
19 projects.

20           One last point about this: What the game plan  
21 here is to get as much information analyzed on these  
22 projects in time for that EIR. And when that EIR for  
23 the Coastal Water Project hits the street, it will  
24 include three alternatives, is my understanding.

25           One of them is the Coastal Water Project, the

1 desal plan at Moss Landing. One of them is a slant  
2 well desal plant -- seawater desal plant in north  
3 Marina. And the third one is our regional components  
4 that make up the water supply that would take the place  
5 of the Coastal Water Project.

6 Our intent is to have our planning analysis in  
7 pretty good shape by the time that EIR is before the  
8 Public Utilities Commission for certification because  
9 one of the most beneficial assets that we bring to this  
10 process is our Regional Plenary Oversight Group.

11 This rag-tag group of 60 officials and  
12 citizens and others make up a pretty potent political  
13 force when they hang together. And I say when they  
14 hang together. They don't always hang together.

15 And it's not a -- we have no unanimity. We  
16 have a tacit understanding that together we can do  
17 better than we can fighting issues individually. And  
18 it seems like it has worked so far.

19 MR. MINTON: Mr. Kasower, you mention the  
20 potential utilization of groundwater. Is this separate  
21 from groundwater that would be available from the  
22 Seaside Aquifer and the ASR?

23 DR. KASOWER: Yes.

24 MR. MINTON: So it's different water?

25 DR. KASOWER: Yes, this is the Salinas Basin.

1           MR. MINTON: Okay. Would implementation of  
2 these projects increase rates to water users in the  
3 region?

4           DR. KASOWER: There's good news and bad news  
5 about rate impacts. And again, I have a client. My  
6 client is the Division of Ratepayer Advocates of the  
7 California Public Utilities Commission. And the  
8 impacts to those ratepayers are a very major concern to  
9 myself, my colleagues at the university, and to the  
10 Regional Plenary Oversight Group.

11           But the facts are that no matter what project  
12 gets implemented to resolve this issue, it is going to  
13 cost money and it's going to impact those ratepayers.  
14 The question for us is really not can we avoid impacts.  
15 They're going to be impacted. They're already  
16 impacted.

17           But the question is can we save them some  
18 money from the alternatives that would occur perhaps if  
19 we are not promoting a regional project.

20           And in saying that, that includes the time  
21 issue, the temporal issue associated with implementing  
22 these kinds of projects. Not all projects are as easy  
23 to implement as others.

24           And what we've tried to do is to avoid the  
25 more complicated and controversial projects

1 notwithstanding there is no such thing in California  
2 water, but some are friendlier than others. And we  
3 have tried very hard to avoid the issues that get our  
4 members in the REPOG to seek their attorneys and  
5 litigate. That's also been a very important point.

6 MR. MINTON: Do you know if the Environmental  
7 Impact Report being prepared by the California Public  
8 Utilities Commission includes a no-action alternative?

9 DR. KASOWER: I believe it does under CEQA,  
10 but I have not seen that, and I'm not working on that.  
11 That's the Energy Division's task, and they have a  
12 consultant that's working on that.

13 MR. MINTON: Thank you. Two remaining  
14 questions.

15 In your experience, would implementation of  
16 the projects in the suite be facilitated by cooperation  
17 among the various water and wastewater agencies in the  
18 region?

19 DR. KASOWER: The project in this suite will  
20 not happen unless there is cooperation between those  
21 agencies. So when those agencies are cooperating,  
22 we're able to move ahead; and when they -- when they  
23 wake up one morning and find they remember what it used  
24 to be, and they dislike each other, then I've got to  
25 put it all back together again.

1           MR. MINTON: To date, has there been  
2 sufficient cooperation among the water and wastewater  
3 agencies in the region to actually implement projects  
4 that would allow Cal Am to comply with Water Board  
5 Order 95-10.

6           DR. KASOWER: Yes and no.  
7           Yes, we were able to get the information  
8 together to do the environmental impact work. That  
9 took an amazing amount of collaboration and cooperation  
10 amongst those agencies.

11           When that was finished, they all went back in  
12 their corners and starting hissing at each other again.  
13 So now, I have to try to bring everybody together and  
14 make nice to move to the next step.

15           So the answer to your question is I've seen  
16 them do it already. They can do it. They can  
17 cooperate. They can treat each other as colleagues,  
18 and they can move forward, and they can make water  
19 happen reliably in this region. We now know what we  
20 have to do to make it happen. So now it's just a  
21 matter of learning to love each other.

22           MR. MINTON: Will any of the work that you  
23 have done delay the work of the Public Utilities  
24 Commission in their efforts to identify a project?

25           DR. KASOWER: Thank you for asking that,

1 Mr. Minton. When I embarked upon this process, I went  
2 to the management of Cal Am, Mr. Turner, Mr. Bunowsky;  
3 and I swore to them that I would make sure that our  
4 process did not get in the way of their time line.

5 We have been extremely careful to not do that.  
6 We got our environmental work in on time with the  
7 deadline that was set by the Energy Division.

8 What I did point out to Mr. Bunowsky in my  
9 comments to him was that the goal, of course, is to  
10 have such a bloody attractive project that they  
11 themselves as an entity would want to toss aside some  
12 of their other ideas and join us or, at a minimum, be  
13 indifferent between our regional project and their  
14 illustrious desal plant. And that would be up to them.

15 So the answer to your question is no, we are  
16 not getting in the way of their time line, no way.

17 MR. MINTON: I have no further questions.

18 CO-HEARING OFFICER BAGGETT: Thank you.

19 Cross-examination, prosecution? Sierra Club?

20 MR. SILVER: No questions.

21 CO-HEARING OFFICER BAGGETT: Carmel River?

22 Mr. Jackson?

23 CROSS-EXAMINATION BY MR. JACKSON

24 FOR CARMEL RIVER STEELHEAD ASSOCIATION

25 MR. JACKSON: Mr. Kasower, it's my

1 understanding that -- my name is Michael Jackson and I  
2 represent the Carmel River Steelhead Association.

3 It's my understanding you have a suite of  
4 projects to solve many problems on the -- in the  
5 Monterey area.

6 DR. KASOWER: That is correct.

7 MR. JACKSON: How does water from your project  
8 get delivered to the Monterey Peninsula specifically?

9 DR. KASOWER: In pipes.

10 MR. JACKSON: And where do the pipes  
11 originate?

12 DR. KASOWER: They would originate near the --  
13 what's presently the Armstrong Ranch and wastewater  
14 agency's facility and the solid landfill.

15 That's the nexus where our projects are  
16 located and will be located, and as such we would be  
17 taking the water either from our brackish desal plant  
18 or the wastewater plant in terms of recycling and  
19 moving that water through those pipes to the Peninsula  
20 and also back out into the Castroville Seawater  
21 Intrusion Project and expansion of that project.

22 MR. JACKSON: And how long would these pipes  
23 be? How many miles of pipe?

24 DR. KASOWER: You know, I would venture to say  
25 if you walk from Marina to Monterey, that's about how

1 many miles they are.

2 MR. JACKSON: Well --

3 DR. KASOWER: I walk, you fly. 30?

4 MR. JACKSON: 30 miles. So without having you  
5 explain the full nature of the project, is it your  
6 testimony that there is available within 30 miles of  
7 the Monterey Peninsula 29,000 acre feet of water that  
8 could be developed?

9 DR. KASOWER: Yes.

10 MR. JACKSON: How long would it take to  
11 develop 10,000 if that was the first -- if you went for  
12 the fastest water first?

13 DR. KASOWER: As I mentioned earlier, we would  
14 like to embark on a strategic implementation plan. And  
15 that question that you have raised, Mr. Jackson, is  
16 exactly the question we want to ask in our fast track  
17 analysis.

18 We haven't done that analysis. We feel that  
19 the fastest water would be diversions from the Salinas  
20 River temporarily to go to the Peninsula, but we  
21 haven't analyzed that within a bona fide evaluation  
22 adequately to answer that with surety.

23 MR. JACKSON: Your extensive experience with  
24 the Bureau of Reclamation must have included at some  
25 point transfer of water from agriculture to urban; is

1 that correct?

2 DR. KASOWER: I know about transfers.

3 MR. JACKSON: The -- is it physically possible  
4 to transfer irrigation water from the Salinas Valley to  
5 the Monterey Peninsula in your opinion?

6 DR. KASOWER: It's physically possible.

7 MR. JACKSON: How large an expense would be  
8 required if that was a temporary program leading up to  
9 your regional program?

10 DR. KASOWER: I think you could build the  
11 Coastal Water Project at Moss Landing easier.

12 MR. JACKSON: With more -- cost less?

13 DR. KASOWER: I don't think you're going to  
14 transfer water from Salinas agriculture. Just my  
15 opinion you are asking here, right?

16 But my experience with agriculture of the type  
17 in the Salinas Valley, such high-valued agriculture, is  
18 just going to exacerbate the relations that we're so  
19 carefully trying to develop, by suggesting that their  
20 water is going to somehow go over the Peninsula to wash  
21 Mercedes Benzes, I don't think that's going to happen  
22 easily.

23 MR. JACKSON: Well, as somebody who lives in  
24 the Sacramento Valley where people show up in Mercedes  
25 Benzes with suitcases full of money, if there's enough

1 money, is it technically feasible --

2 DR. KASOWER: Yes.

3 MR. JACKSON: -- to transfer?

4 DR. KASOWER: Absolutely.

5 MR. JACKSON: What would be the second easiest  
6 water out of your regional suite other than water from  
7 the Salinas Valley by pipe?

8 DR. KASOWER: I believe that the easiest water  
9 is working with the County of Monterey and looking at  
10 water that would be diverted from the new Salinas  
11 Valley water project, the rubber dam, or diverted from  
12 the river at some point in that location to go into  
13 those pipes.

14 But if you're talking about no pipes, I think  
15 you're pretty much looking at either some kind of ship  
16 desal plant that parks itself at the pier in Monterey  
17 or water bags that are towed to the pier in Monterey.  
18 I don't see how you get water into that Peninsula and  
19 not use the Carmel River without pipes.

20 Pipes are us.

21 MR. JACKSON: Pipes are us. And pipes are not  
22 always that expensive. Have you in your regional  
23 examination checked the Pajaro Valley on the other  
24 side?

25 MR. RUBIN: I'm going to raise an objection.

1 I'm trying to be patient here. I'm not exactly sure  
2 where Mr. Jackson is going with his questions.

3 It seems to me pretty far foul of the scope of  
4 this Phase 2, trying to explore different alternatives  
5 that might be considered in an EIR of the Coastal Water  
6 Project sounds like where he's going. I'm not sure how  
7 that's relevant here.

8 CO-HEARING OFFICER BAGGETT: I would continue  
9 the line of questioning. Overrule. We've granted  
10 latitude before. If you could try to focus. The hour  
11 is late, so if you could -- I mean, we could probably  
12 talk about regional solutions for the next eight weeks.  
13 It sounds like even for years. So if we could focus on  
14 this, focus your questions, it would be appreciated.

15 MR. JACKSON: All right.

16 CO-HEARING OFFICER BAGGETT: We've already got  
17 his written testimony which has a lot of this in it.

18 MR. JACKSON: How long would it take using the  
19 pipes in terms of time if you were trying to deliver  
20 water to meet a 15 percent reduction per year in the  
21 pumping on the Carmel River? In other words,  
22 15 percent this year, 15 percent next year, 15 percent  
23 the year after that, and until the Carmel River was no  
24 longer being pumped dry?

25 DR. KASOWER: Again, we would very much like

1 to crunch these numbers in our tragic implementation  
2 plan fast track chapter. But I am -- I'll give you a  
3 professional guess.

4 I believe that if we can find fast track water  
5 that doesn't require some kind of heroic treatment plan  
6 that this could happen within the time frame that has  
7 been laid out -- before the time frame has been laid  
8 out for the Coastal Water Project which somebody said  
9 is 2014.

10 I think that we're talking about maybe a  
11 period of four years from now, and that would have to  
12 get through the permitting, would have to get through  
13 the negotiations. But pipelines get built easier than  
14 desal plants and water transfers.

15 MR. JACKSON: Have you looked at the time line  
16 of the Prosecution Team in this case?

17 DR. KASOWER: No.

18 MR. JACKSON: If I told you that their time  
19 line would basically supply 5- to 6,000 acre feet of  
20 less diversion within 2015, could elements of your  
21 project deal with that in that time line?

22 DR. KASOWER: If the agencies involved in this  
23 regional suite cooperated, I believe that we could  
24 completely supplant the diversion from the Carmel River  
25 within that time line.

1           MR. JACKSON: Thank you. No further  
2 questions.

3           CO-HEARING OFFICER BAGGETT: Public Trust  
4 Alliance? Monterey Peninsula Water Management  
5 District?

6           MR. LAREDO: Thank you.

7           CROSS-EXAMINATION BY MR. LAREDO  
8 FOR MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

9           MR. LAREDO: Good afternoon, Mr. Kasower. My  
10 name is David Laredo, general counsel for the Monterey  
11 Peninsula Water Management District.

12          DR. KASOWER: Good afternoon, Mr. Laredo.

13          MR. LAREDO: I applaud your enthusiasm and  
14 your optimism.

15          DR. KASOWER: Thank you.

16          MR. LAREDO: Your testimony refers to regional  
17 water supply planning process. Could you define for me  
18 what you mean by the region? Can you -- what are the  
19 four points of the region? I imagine two of them are  
20 in the Pacific Ocean, but how far does it go to the  
21 east and north?

22          DR. KASOWER: Yes. Well, we are really  
23 looking all the way up to basically where the Pajaro  
24 Valley Water Management District is located. There is  
25 a possibility of bringing them in.

1           We've talked to the City of Salinas, to the  
2 California Water Service Company. Presently, they have  
3 a plan to extract more groundwater from the Salinas  
4 Basin and their water supply, but there's an interest  
5 there in longer-term issues associated with our  
6 seawater intrusion project component since the more we  
7 suck from the Salinas Basin the more we get seawater  
8 intrusion.

9           So we are not really working our way south of  
10 Salinas. We're not touching upon Chualar or those  
11 communities, King City, nothing there.

12           MR. LAREDO: Thank you.

13           You mentioned a suite of projects. Are you  
14 contemplating that the regional plan would be a single  
15 project or multiple projects?

16           DR. KASOWER: The regional plan is multiple  
17 projects. And when I say that, there are not just  
18 simply a number of the same kind of projects. Each of  
19 the single kind of projects could be unitized or  
20 modularized.

21           But they're a suite of projects from  
22 100 percent recycling -- we're proposing to recycle  
23 100 percent of the waste flow presently produced in the  
24 Monterey region, storing it in the winter and using  
25 it -- we have a number of --

1           MR. LAREDO: I think you've answered my  
2 question.

3           DR. KASOWER: I'm getting to the good part.

4           MR. LAREDO: I'm sure you'll have a chance to  
5 weave it in. By multiple projects, do you contemplate  
6 that there would be separate and independent project  
7 sponsors for these different projects within the suite?

8           DR. KASOWER: Yes. And when I say that, the  
9 cooperation requires at least a basic contractual  
10 relationship between agencies. And as you appreciate,  
11 in Monterey we have a great history of not even getting  
12 to contractual relationships.

13           MR. LAREDO: Do you contemplate that there  
14 would be one Lead Agency or multiple co-Lead Agencies  
15 for the suite of projects?

16           DR. KASOWER: It would depend on the project.  
17 I can see that the CSIP expansion would probably be the  
18 county water resources agency. The -- and some of the  
19 recycling projects could have some partners. I would  
20 see Cal Am as purchasing water, not owning the project  
21 in this regional plan.

22           But a lot of that has to do with how  
23 successful we are able to engender the excitement and  
24 enthusiasm of those agencies to move ahead to float the  
25 bonds they need and spend the money they need from

1 their ratepayers to build those projects.

2 MR. LAREDO: Do you see any new forms of  
3 governance required, or can these projects be  
4 accomplished through the existing governance models?

5 DR. KASOWER: We -- we're not -- we  
6 specifically have tried to avoid the governance issue  
7 because we believe that, at least to date, as the  
8 convener and the autocrat facilitator of the process, I  
9 believe that we can do everything with contracts.

10 As you may recall, there has been an attempt  
11 in the Monterey area to forge some kind of regional  
12 governance structure. And it looked to us when we  
13 examined it as being an avoidance process for avoiding  
14 water supply.

15 MR. LAREDO: While I would agree with you that  
16 you can certainly deliver water under contracts, you  
17 need to have a governing authority to be responsible  
18 for the entire project as Lead Agency.

19 So how do you contemplate the governance of  
20 Lead Agency? Would that be an existing agency?

21 DR. KASOWER: Yes.

22 MR. LAREDO: Which one?

23 DR. KASOWER: It would depend on the project.  
24 So if you were a grower in the new CSIP expanded  
25 portion, you would be contracting with the county water

1 resources agency for your water. The treatment plant  
2 may be contracted to the Pollution Control Agency to  
3 do --

4 MR. LAREDO: When you say suite of projects,  
5 you really -- this is a plan for a variety of different  
6 projects that will be approved?

7 DR. KASOWER: Yes. With a variety of  
8 different project sponsors cooperating contractually  
9 with each other so that they know what to expect, when  
10 to expect it, and how each of them are going to behave  
11 relative to the treatment, the delivery, the use, the  
12 retailing, the wholesaling.

13 And one other point about your regional  
14 governance. If that looks like something that they all  
15 feel is necessary, there is no reason not to do it.  
16 But again, there is no reason to do it. We have  
17 contract law that covers all that.

18 MR. LAREDO: I wasn't trying to make a point;  
19 I was asking a question.

20 DR. KASOWER: Thank you. I'm answering it.

21 MR. LAREDO: You provided a yield to quantify  
22 the goals for the suite of projects, and I believe you  
23 mentioned the number 29,700 acre feet per year?

24 DR. KASOWER: Yeah, between 29,700 to 29,900,  
25 somewhere in there.

1           MR. LAREDO:  Would that -- does that all  
2 amount to replacement water?  Or is there some  
3 increment of water for new uses within the 29,700?

4           DR. KASOWER:  The 29,700 includes agriculture  
5 within the Salinas Valley.  If you are looking at the  
6 Peninsula, it is --

7           MR. LAREDO:  I'm not sure you answered my  
8 question.  Is it replacement water, or is it water for  
9 new uses that do not now exist?

10          DR. KASOWER:  It's replacement water, and it's  
11 water that's been defined as, for example, lots of  
12 record that have been acknowledged to potentially  
13 receive water.

14          MR. LAREDO:  Okay.  So lots of record would  
15 include water for new uses?  New use on those lots of  
16 record?

17          DR. KASOWER:  Yes.

18          MR. LAREDO:  Are lots of record on the  
19 Monterey Peninsula included within your quantification  
20 total with respect to the increment of water for the  
21 Monterey Peninsula?

22          DR. KASOWER:  Yes.

23          MR. LAREDO:  Now, help me understand how the  
24 planning effort so far relates to the CPUC Coastal  
25 Water Project EIR process.

1 DR. KASOWER: When we began the regional  
2 process, we recognized we had to garner some kind of  
3 legitimacy since we were not a joint power group, we  
4 were not a governance structure; we were a rag-tag  
5 group of officials and citizens and water wonks and  
6 others.

7 And so we thought if we could get into that  
8 EIR with a project that would allow us to have -- to  
9 gain a little bit of political legitimacy so that we  
10 could appear at the Public Utilities Commission --  
11 commissioners are going to certify that EIR -- and  
12 maybe bring a busload of 60 or 80 people to sit at the  
13 podium and say we like that project.

14 MR. LAREDO: So is your plan going to be a  
15 project within the Coastal Water Project CEQA planning?

16 DR. KASOWER: Yes, it is.

17 MR. LAREDO: Which project? You mentioned  
18 yours is a suite of projects. Is it all of them?

19 DR. KASOWER: Well, this is up to the Energy  
20 Division analysts, how they're going to parse those  
21 projects into equivalency to the Coastal Water Project.

22 So we handed them the environmental  
23 documentation for the suite of projects and the  
24 components, and now it's up to them to form them into  
25 equivalency for -- under CEQA for the EIR.

1           MR. LAREDO: As an alternative to Cal Am's  
2 application?

3           DR. KASOWER: Yes.

4           MR. LAREDO: Do you know whether this  
5 alternative analysis and EIR will be done to a level of  
6 detail that will allow approval of this project?

7           DR. KASOWER: Yes, it will.

8           MR. LAREDO: And approval by the PUC as the  
9 Lead Agency?

10          DR. KASOWER: I'm going to comment on this,  
11 but I'm not a CEQA attorney.

12          But it's my understanding that there is going  
13 to be required an additional body to concurrently  
14 approve. And I'm not using the correct CEQA words, but  
15 because we are working with public agencies who may be  
16 project sponsors, as you and I discussed a few minutes  
17 ago in my testimony, those agencies would have to also  
18 at the same time do some sort of certification of their  
19 piece.

20          MR. LAREDO: Has any other agency come forward  
21 and offered at this time to act as a co-Lead Agency on  
22 this project?

23          THE WITNESS: No, we haven't asked for a Lead  
24 Agency on this project.

25          MR. LAREDO: Thank you. I have no further

1 questions, but I still applaud your optimism.

2 DR. KASOWER: Thank you.

3 CO-HEARING OFFICER BAGGETT: Thank you.

4 Pebble Beach Company? Any of the cities? Hospitality  
5 Association? No? Mr. Rubin?

6 CROSS-EXAMINATION BY MR. RUBIN

7 FOR CALIFORNIA AMERICAN WATER COMPANY

8 MR. RUBIN: Good afternoon, Mr. Kasower. Jon  
9 Rubin, California American Water. Just a few brief  
10 questions, I hope.

11 DR. KASOWER: Good afternoon.

12 CO-HEARING OFFICER BAGGETT: Yes or no?

13 DR. KASOWER: I was hoping he'd object to me.

14 CO-HEARING OFFICER BAGGETT: Just keeping  
15 Dr. Wolff calm up here so he doesn't . . .

16 MR. RUBIN: Did the Energy Division of the  
17 Public Utilities Commission agree to postpone the  
18 Coastal Water Project schedule to allow your process to  
19 finish?

20 DR. KASOWER: Not by my knowledge, not as a  
21 result of our consultant's work.

22 MR. RUBIN: And in your testimony, the  
23 Planning and Conservation League, I believe 2? You  
24 talk about a number of interests that have been  
25 participating in your process, and you list the

1 interests as being agency managers, senior staff,  
2 regulatory staff, local and state elected officials,  
3 elected and appointed board members; is that correct?

4 DR. KASOWER: Yes.

5 MR. RUBIN: Has anyone from the State Water  
6 Resources Control Board been participating in the  
7 process?

8 DR. KASOWER: We've had a member from the  
9 Regional Board participate.

10 The State Water Board members were -- some of  
11 them were briefed maybe nine or ten months ago, and  
12 then we kept them out of the loop, of the e-mail loop,  
13 due to the nature of this proceeding and our  
14 anticipation that this would occur.

15 MR. RUBIN: But there have been no State Water  
16 Resources Control Board staff attending any of the  
17 meetings?

18 DR. KASOWER: Not that I recall, no.

19 MR. RUBIN: Are they welcome to attend?

20 DR. KASOWER: Absolutely.

21 MR. RUBIN: Now have you been involved in  
22 the -- generally involved in the development of the  
23 Environmental Impact Report for the Coastal Water  
24 Project?

25 DR. KASOWER: I worked on part of it. I

1 reviewed the document and made comments. That report  
2 was done by the RMC Consulting Group, so I basically  
3 was a reviewer of it.

4 MR. RUBIN: Well, again, do you know if any of  
5 the State Water Resources Control Board staff have been  
6 involved in the development of the Coastal Water  
7 Project that's under review in the EIR?

8 DR. KASOWER: That I don't know.

9 MR. RUBIN: I have no further questions.

10 DR. KASOWER: Not going to object to me?

11 MR. RUBIN: I can object if you really want.

12 CO-HEARING OFFICER BAGGETT: Any recross?

13 Redirect?

14 REDIRECT-EXAMINATION BY MR. MINTON

15 FOR PLANNING AND CONSERVATION LEAGUE

16 MR. MINTON: Three questions.

17 Has the rubber dam project received all  
18 necessary approvals, do you know?

19 DR. KASOWER: My understanding is that it has  
20 received approvals, and the contracts for building it  
21 have actually been let. And it had a neat surprise;  
22 the contracts came in less than the engineer's  
23 estimate.

24 MR. MINTON: Is Marina Coast Water Agency  
25 physically located between, say for instance, the

1 diversion point for the rubber dam or that area that  
2 you identified where brackish water, groundwater, could  
3 be obtained and treated, located between there and Cal  
4 Am's service area?

5 DR. KASOWER: I believe you're talking about  
6 the Marina Coast Water District.

7 MR. MINTON: I'm sorry; thank you.

8 DR. KASOWER: Yes.

9 MR. MINTON: Water District.

10 DR. KASOWER: They are located in Marina, and  
11 they serve the Fort Ord area as well.

12 MR. MINTON: And did they recently within the  
13 last two or three years upgrade, up-size their pipes  
14 to -- that would among other things accommodate the  
15 delivery of the water to the Cal Am service area?

16 DR. KASOWER: Yes. They have been building  
17 major trunk lines along General Jim Moore Boulevard.

18 MR. MINTON: Thank you.

19 CO-HEARING OFFICER BAGGETT: Any recross by  
20 any parties? If not, we have exhibits to enter into?

21 MR. MINTON: Yes, we move to enter into --

22 CO-HEARING OFFICER WOLFF: I'm sorry; I was a  
23 little slow. I need to understand something about the  
24 rubber dam project which was asked about on redirect.

25 Looking at your slide, the tall bar chart on

1 page 3 which shows a bunch of different projects with  
2 different quantities: The rubber dam project is  
3 Salinas River diversion or is it Salinas Basin  
4 groundwater?

5 DR. KASOWER: Salinas River diversion. So it  
6 would be a turn-out that would be built within that  
7 facility.

8 CO-HEARING OFFICER WOLFF: Thank you.

9 CO-HEARING OFFICER BAGGETT: Now, no other  
10 questions?

11 MR. MINTON: With that, I would move to enter  
12 into the record Exhibit PCL-1, PCL-2, and PCL-3 please.

13 CO-HEARING OFFICER BAGGETT: Any objection?  
14 If not, so entered.

15 (Exhibits PCL-1, PCL-2, and PCL-3 were  
16 admitted into evidence.)

17 MR. MINTON: Thank you.

18 CO-HEARING OFFICER BAGGETT: Thank you very  
19 much.

20 (Discussion off the record)

21 CO-HEARING OFFICER BAGGETT: We're back on the  
22 record.

23 MR. SILVER: We'd like to put on Marcin  
24 Whitman.

25 MR. RUBIN: Before the witness starts

1     testifying, I do want to raise the similar objection to  
2     the one that we've been discussing, that we discussed  
3     this morning.

4             Mr. Whitman's testimony is focused on a single  
5     issue as far as I can tell, and it deals with the  
6     effect of the Los Padres Dam. I think there is -- I  
7     can't read this in any way that falls within your  
8     ruling this morning.

9             The issue is specifically addressing the  
10    impediment -- the alleged impediment that the dam  
11    causes and the effects of the dam, and so I don't see  
12    how this goes to any of the operational issues related  
13    to the dam. I think it's -- for that reason, it's  
14    irrelevant for this phase.

15            MR. SILVER: By way of response, there are  
16    really two --

17            CO-HEARING OFFICER BAGGETT: Put your mic on.

18            MR. SILVER: There are two correspondents here  
19    to the testimony. It is true that part of it deals  
20    with remediation and Los Padres Dam, but I think the  
21    portion that Sierra Club feels is appropriately before  
22    here relates basically to the reasons for and  
23    circumstances relating to fish passage difficulties at  
24    Los Padres Dam.

25            And I think that the importance of that

1 indicates the importance of restoration and supply of  
2 water to -- it emphasizes the habitat importance below  
3 Los Padres and insofar as there are substantial  
4 difficulties in package through Los Padres both  
5 upstream and downstream.

6           So we would like to -- Sierra Club would like  
7 to put him on to show -- to demonstrate to the Board  
8 the enhanced value that occurs downstream for habitat  
9 restoration by reason of the substantial problems at  
10 Los Padres Dam.

11           MR. RUBIN: Maybe Mr. Silver could point to  
12 where in Mr. Whitman's testimony he's testifying to the  
13 issue of habitat downstream. The way I read this is  
14 focused on dam --

15           CO-HEARING OFFICER BAGGETT: I will allow the  
16 witness to continue.

17           I think Mr. Silver made the point that this  
18 isn't to the truth -- it's not, as I understand the  
19 testimony, it's not to state the benefits of  
20 downstream; it's just to explain the barrier posed by  
21 the dam so that then other considerations, other  
22 witnesses, I assume you will be talking about  
23 opportunities below the dam.

24           MR. SILVER: That's absolutely correct.

25           CO-HEARING OFFICER BAGGETT: So the very

1 narrow purpose -- we'll allow the testimony to come in  
2 for the very narrow purpose of enlightening the Hearing  
3 Officers and Team of the barrier caused by the dam and  
4 limited to that, not a remedy that could be allowed,  
5 and we'll deal with those later.

6 If you want to explain to facts, keep it that  
7 narrow, continue.

8 MR. SILVER: I -- that's my understanding.

9 CO-HEARING OFFICER BAGGETT: Shouldn't take  
10 too long.

11 MARCIN WHITMAN

12 Called by SIERRA CLUB

13 DIRECT EXAMINATION BY MR. SILVER

14 MR. SILVER: Mr. Whitman, have you taken the  
15 oath in this proceeding this morning?

16 MR. WHITMAN: Yes, I have.

17 MR. SILVER: And could you briefly describe  
18 your general qualifications relating to this matter?

19 MR. WHITMAN: I have been working both for  
20 NOAA and then later for Fish and Game in fish passage  
21 throughout the coastal and central valley of  
22 California. I hold degrees in marine engineering,  
23 aquaculture engineering, and marine biology. And I  
24 have been involved in various consultations with  
25 projects in the Carmel system since 1991.

1           MR. SILVER: And could you just describe your  
2 specific experience with the Carmel River system?

3           MR. WHITMAN: I have been asked by various  
4 parties on a time-available basis to participate in  
5 various forums at sites including Los Padres, San  
6 Clemente, Old Carmel Dam, the ford crossing at Sleepy  
7 Hollow, and Dormany Dam in the Carmel River system.

8           MR. SILVER: Could you briefly summarize your  
9 testimony with regard to the existing conditions of  
10 upstream passage at Los Padres Dam with respect to the  
11 southern central California steelhead DPS?

12          MR. WHITMAN: Okay. The Los Padres upstream  
13 system has been a series of traps, a trap-and-haul  
14 system. And it's gone through -- I think we're now in  
15 our third trapping system that's in operation now.

16                 In my testimony I go through in detail  
17 describing -- well, not in detail, but briefly  
18 describing the old trap, the new trap, and deficiencies  
19 in each of those systems.

20                 Key component in any sort of fish passage  
21 system, there's two key components.

22                 One is attraction water so that you're  
23 basically trying to fool the fish into coming into  
24 whatever passage system you're doing as opposed to the  
25 bulk of the water which is usually going with a

1 spillway around some other project purpose. This does  
2 not meet standards in terms of having enough attraction  
3 water to draw into that.

4           The second key component in any sort of adult  
5 fish passage system -- again, getting them to the  
6 beginning of the system -- is location and locating it  
7 to compete with the bulk of the water, again trying to  
8 fool the fish into taking the route you want them to  
9 take with a minority of water. And both of these, both  
10 the old trap and the new trap, lack compared to current  
11 practice.

12           MR. SILVER: So I take it that you were  
13 just -- could you summarize then with respect to the  
14 so-called new trap, the present condition at Los Padres  
15 Dam, in your estimation the general facts with regard  
16 to upstream passage of steelhead?

17           MR. WHITMAN: The new trap consists of an  
18 Alaskan Steeppass system. In most of the current  
19 references I use, we no longer use that as a regular  
20 method to pass the bulk of fish in the run.

21           What we use that for specifically is to -- as  
22 a measuring device for a subset of a healthy run or for  
23 a temporary facility, so essentially that's being used  
24 here as kind of what we would call a quick Band-Aid  
25 that we'd be using while we'd be putting another system

1 in or for a temporary enumeration system.

2           The reason these have gone out of favor is  
3 they require a single effort from the fish. There's no  
4 resting involved. There is -- they have to -- trends  
5 for each section through resting pool. And in doing  
6 so, aside from the issues I already talked about in  
7 terms of finding the ladder in the first place, you're  
8 weeding out a substantial, at times, population because  
9 some are able to make that single effort and some are  
10 not. How much depends on the site, depends on the  
11 population, a lot of variables there. But that's why  
12 they've gone out of favor. You're not out -- you're  
13 kind of weeding out for the athletes.

14           MR. SILVER: So it would be your judgment  
15 based on your experience then that there would be -- at  
16 least you could characterize this as a substantial  
17 impairment to the passage of steelhead at the dam going  
18 up -- going upstream?

19           MR. WHITMAN: This is -- my professional  
20 judgment is this is forming some sort of barrier, some  
21 sort of filter on the population coming up. The range  
22 of that can be substantial depending on the individual  
23 factors. To my knowledge, there has not been an  
24 enumeration of that.

25           CO-HEARING OFFICER BAGGETT: Mr. Rubin?

1           MR. RUBIN: Can I just ask Mr. Silver to speak  
2 into the microphone. It's a little hard to hear him.

3           MR. SILVER: I'm sorry.

4           With regard to -- can you generally describe  
5 your testimony -- with regard to the existing  
6 conditions of the downstream passage at Los Padres Dam  
7 with respect to the steelhead DPS?

8           MR. WHITMAN: Okay. Again, in downstream  
9 passage, there's several conditions that the juveniles  
10 must be routed through -- juveniles and kelts must be  
11 routed through in going downstream.

12           The first is going through the reservoir.  
13 There are several potential hazards there, and one of  
14 them being that we need to wait until the spill again;  
15 so if we are in an early freshet that does not spill,  
16 say after a drought, there is no route at all, both  
17 because of water quality, hydraulics, and predation  
18 potentials. Those are all hazards that exist within  
19 the reservoir.

20           And then there is the known route just going  
21 down the spillway that, again, due to depth and speed  
22 can cause injuries.

23           Then there's plunging to the plunge pool  
24 downstream, again opportunities for disorientation,  
25 delay, and predation there.

1           And then they're back into the natural river  
2 system.

3           MR. SILVER: I have no further questions.

4           CO-HEARING OFFICER BAGGETT: Thank you. Any  
5 cross-examination, Prosecution Team? Planning and  
6 Conservation League? Go down the list. Any party have  
7 cross-examination questions? Mr. Rubin? Okay.

8           All other parties pass; Cal Am, you're up.  
9 While counsel is approaching, this is a very narrow  
10 scope for this witness.

11          MR. RUBIN: I just have a few questions for  
12 Mr. Whitman.

13                   CROSS-EXAMINATION BY MR. RUBIN

14                   FOR CALIFORNIA AMERICAN WATER COMPANY

15          MR. RUBIN: Mr. Whitman, you're currently an  
16 employee of the California Department of Fish and Game;  
17 is that correct?

18          MR. WHITMAN: That's correct.

19          MR. RUBIN: Have you received authorization  
20 today to appear on behalf of the Sierra Club?

21          MR. WHITMAN: You mean by the Sierra Club or  
22 Fish and Game?

23          MR. RUBIN: By your employer.

24          MR. WHITMAN: Yes.

25          MR. RUBIN: And are you here speaking on

1 behalf of the California Department of Fish and Game?

2 MR. WHITMAN: I'm not speaking here in terms  
3 of policy for Fish and Game. I'm a technical expert.  
4 I received permission to act in that role. We were  
5 requested, and that falls within the scope of my  
6 duties, so we are answering that request.

7 MR. RUBIN: Thank you.

8 Mr. Whitman, are you aware of a Memorandum of  
9 Understanding that Department of Fish and Game enters  
10 into with the Monterey Peninsula Water Management  
11 District and California American Water?

12 MR. WHITMAN: I'm sure they have entered into  
13 several different agreements.

14 MR. RUBIN: Are you aware of a Memorandum of  
15 Agreement that's executed annually between Monterey  
16 Peninsula Water Management District, California  
17 American Water, and the Department of Fish and Game  
18 regarding operations on the Carmel River?

19 MR. WHITMAN: I have no specifics on that.

20 MR. RUBIN: So you are not aware of the MOA?

21 MR. WHITMAN: I am aware that there are MOAs  
22 between those parties. I'm not aware of this one that  
23 you're referring to or the specifics thereof.

24 MR. RUBIN: Thank you.

25 I have no further questions.

1 CO-HEARING OFFICER BAGGETT: Very good. Any  
2 redirect?

3 MR. SILVER: I have none.

4 CO-HEARING OFFICER BAGGETT: Very good. Would  
5 you like to enter the testimony?

6 MR. SILVER: Yes, I would. I would like to  
7 enter the testimony of Marcin Whitman in this  
8 proceeding.

9 CO-HEARING OFFICER BAGGETT: Okay.

10 MR. RUBIN: And again, I have raised my  
11 objections and --

12 CO-HEARING OFFICER BAGGETT: Your objections  
13 are noted for the record, and the testimony is admitted  
14 as previously ruled.

15 So thank you very much.

16 MR. WHITMAN: I do have one slight correction  
17 I wanted to make to my record. I visited the site last  
18 week, and there is a condition where the -- on page 5,  
19 line 8, the Steeppass, and this is mentioned on the  
20 Steeppass in terms of the submergence, it's perched. I  
21 believe that was on line 8. Anyway, it's here in the  
22 testimony describing the new trap.

23 That currently is not the condition, although  
24 that could easily become the condition again due to the  
25 nature of the control for that. Minor correction.

1 CO-HEARING OFFICER BAGGETT: Do we need to  
2 reopen to have that correction? It sounds like it's  
3 going to change, so we'll leave it. You're in the  
4 record, but we'll take the exhibit as submitted.  
5 Thanks.

6 With that, we've still got time. Do you want  
7 to do your opening statement, Mr. Silver, while you're  
8 up, or wait and do it with Mr. Williams? We've got  
9 20 minutes.

10 MR. SILVER: I'd like to confer with  
11 Mr. Williams, just for a minute.

12 CO-HEARING OFFICER BAGGETT: Is he going to  
13 take more than 20 minutes for his?

14 MR. SILVER: He has it planned for 20 minutes.

15 DR. WILLIAMS: But I'll be interrupted a  
16 number of times.

17 CO-HEARING OFFICER WOLFF: Is that fair,  
18 Mr. Rubin?

19 MR. RUBIN: At least once at the beginning.

20 (Laughter)

21 CO-HEARING OFFICER BAGGETT: Okay. Why don't  
22 you caucus -- let's go off the record.

23 (Discussion off the record)

24 CO-HEARING OFFICER BAGGETT: Shall we go back  
25 on the record? Continue.

1           MR. RUBIN: Thank you, Jon Rubin, California  
2 American Water. There was an oversight on my part  
3 regarding a letter that I spoke with Mr. Kassel on. It  
4 is a June 7, 2006 letter previously marked as a  
5 California American Water exhibit. I believe it was  
6 21.

7           It was initially admitted for official notice,  
8 and I could do that again if we use it, but it might be  
9 easier to admit it since it was authenticated by  
10 Mr. Kassel.

11           CO-HEARING OFFICER BAGGETT: Is there any  
12 objection from any party? Why don't you give us an  
13 exhibit number.

14           MR. RUBIN: It is marked. I believe it is 21.  
15 I will confirm that. But it was marked as an exhibit  
16 as part of the official notice that we have asked for  
17 during the prehearing briefing and therefore was only  
18 admitted for the prehearing briefing purposes.

19           I would like it admitted as part of the  
20 record.

21           CHIEF COUNSEL TAYLOR: The first letter  
22 regarding the official notice or the second letter?

23           MR. RUBIN: I don't recall specifically. I  
24 think the document that was marked as Exhibit CAW-21.  
25 It's a June 7, 2006, letter.

1 CO-HEARING OFFICER BAGGETT: Okay.

2 MR. LAREDO: I believe that was the letter  
3 that has been withdrawn by the State Board. So I  
4 certainly agree that it could be marked for  
5 identification, but I don't believe it should be  
6 admitted into evidence because the letter has been  
7 withdrawn and therefore does not provide a basis to  
8 make any decision upon or findings based upon.

9 MR. RUBIN: Well, I agree with Mr. Laredo that  
10 the statements in the letter have been essentially  
11 withdrawn -- or actually withdrawn.

12 But it is an important piece of the  
13 information that we would like to rely upon. It is a  
14 letter that we believe raises due process issues  
15 because it was prepared by Ms. Mrowka, signed by  
16 Mr. Kassel on behalf of Ms. Whitney.

17 So I could ask the Board to take official  
18 notice of the letter if that makes a substantive  
19 difference and appeases Mr. Laredo.

20 MR. LAREDO: As long as the Board would also  
21 take official notice that the letter was withdrawn,  
22 then it could be introduced for those purposes.

23 CO-HEARING OFFICER BAGGETT: The Board will  
24 take both letters, the letter and letter retracting the  
25 letter, and put them in as Exhibit number --

1           MR. RUBIN: That -- the letter from 2007 which  
2 reflects the withdrawal of the 2006 letter has already  
3 been admitted into evidence as a Monterey Peninsula  
4 Water Management District Exhibit. And so that is part  
5 of the record.

6           CO-HEARING OFFICER BAGGETT: Okay. So we will  
7 make the changes noted.

8           (The status of Exhibit CAW-21 was  
9 modified as above.)

10          MR. LOWREY: Mr. Baggett, may I safely advise  
11 the witnesses for MCHA -- and I know Pebble Beach has  
12 the same issue -- that unless they desire to be here  
13 for the fun of it they don't have to be here tomorrow?  
14 Or do you want them to be available all through  
15 tomorrow?

16          CO-HEARING OFFICER BAGGETT: We can go off the  
17 record.

18          (Discussion off the record)

19          CO-HEARING OFFICER BAGGETT: Let's go back on  
20 the record and address this. Let's go.

21          MR. RUBIN: Mr. Baggett, as I understand it  
22 the Public Trust Alliance is seeking to have testimony  
23 presented by Mr. Warburton as well as Mr. Riley, and we  
24 do object to Mr. Riley's testimony for two reasons; and  
25 I could articulate those if you want to hear them.

1 CO-HEARING OFFICER BAGGETT: Please.

2 MR. RUBIN: Mr. Riley sought to participate in  
3 this proceeding by filing a Notice of Intent. I  
4 believe he filed it on April 5th, 2008, three weeks  
5 after the due date for Notices of Intent.

6 And you addressed this in a ruling and  
7 determined that Mr. Riley could not participate because  
8 of his late Notice of Intent. I think that was in your  
9 May 13th ruling.

10 After the ruling, Mr. Riley prepared testimony  
11 apparently on behalf of the Public Trust Alliance and  
12 submitted the testimony even though the Public Trust  
13 Alliance Notice of Intent did not include him as a  
14 potential witness.

15 After they submitted the testimony, the Public  
16 Trust Alliance then filed an amended Notice of Intent.

17 So we have a procedural issue. We do also  
18 have a relevance issue with regard to the testimony  
19 that has been submitted.

20 MR. WARBURTON: There are also several parties  
21 who submitted late Notices of Intent, and the Hearing  
22 Officers assured both of them in their ruling on the  
23 13th that their testimony could be -- they were  
24 encouraged to collaborate and cooperate with other  
25 parties and that their testimony would be represented

1 in the presentations of the other parties.

2 And I think it was on the April 1st policy  
3 statements that we first became aware of Mr. Riley's  
4 testimony and the possible relevance of it. And he  
5 didn't know at that point about how to get into this  
6 proceeding.

7 So it was late discovered relevant testimony,  
8 and it's totally consistent with public interests which  
9 are represented by the Public Trust Alliance.

10 CO-HEARING OFFICER WOLFF: Just a moment  
11 please.

12 (Hearing Officers' consultation)

13 MR. RUBIN: I would ask that the Hearing  
14 Officers also review the testimony that has been  
15 proposed for submittal by Mr. Riley.

16 CO-HEARING OFFICER BAGGETT: We are doing that  
17 as we speak. Let's take this under submission; go off  
18 the record a couple of minutes.

19 (Hearing Officers' consultation)

20 CO-HEARING OFFICER BAGGETT: Okay. We'll go  
21 back on the record.

22 Based on the May 13th ruling on parties and  
23 denial of party status, we clearly did encourage the  
24 parties to consolidate and if they have relevant  
25 evidence to present to seek other parties.

1           To that extent, we would allow Mr. Riley to be  
2 a witness only to the second portion of his testimony.  
3 The liability phase has passed; we aren't going to  
4 allow him to come back and deal with that.

5           But the remediation section on his -- the two  
6 witnesses, Mr. Warburton, will be allowed strictly, we  
7 will allow only to be addressed remediation by the  
8 State Water Resources Control Board. Not the liability  
9 phase. You missed that part.

10           You did notice him as a witness in the second  
11 phase, so we will allow that.

12           MR. WARBURTON: It's extremely difficult in  
13 this proceeding to see how the Public Trust can be  
14 represented.

15           The ruling on May 13th said the testimony on  
16 the Public Trust would be acceptable only in Phase 2.  
17 And I respected that, and I have a lot of respect for  
18 the liability phase. But this hearing was not  
19 bifurcated. At least we were told it was not  
20 bifurcated.

21           CO-HEARING OFFICER BAGGETT: Well, I think it  
22 has been, into I believe the remedy phase. And this is  
23 the remedy phase.

24           MR. WARBURTON: Are you --

25           CO-HEARING OFFICER WOLFF: Perhaps I can help.

1 The hearing was bifurcated. The decision of the Board  
2 was not bifurcated.

3 MR. WARBURTON: The presentation --

4 CO-HEARING OFFICER WOLFF: But the hearing was  
5 bifurcated and noticed that liability was on certain  
6 days and remedy on other days.

7 MR. WARBURTON: But the Public Trust is a  
8 continuing responsibility, and it has application to  
9 both. And, you know, the -- there was a whole section  
10 of your ruling on the presentation of Public Trust  
11 evidence in an enforcement proceeding. And evidence  
12 what the -- well, it seemed to me that evidence was  
13 only going to be accepted in Phase 2, and I went along  
14 with that.

15 CO-HEARING OFFICER BAGGETT: Right. And we  
16 are allowing your witness to come forward with the  
17 remediation section of his testimony.

18 The Public Trust is a legal construct. It's  
19 not an evidentiary construct, and --

20 MR. WARBURTON: It's an affirmative obligation  
21 on your part.

22 CO-HEARING OFFICER BAGGETT: Right, it's a  
23 legal construct. So it's not really what -- we didn't  
24 reopen this entire proceeding as a Public Trust  
25 proceeding under our Public Trust authority under that

1 section of the Water Code.

2 If we would have, it would make -- it would  
3 have been starting all over again. I think many of the  
4 attorneys in the room would recognize we'd be starting  
5 at Ground Zero on the Carmel River and we'd be here for  
6 months probably, which maybe we should have done.

7 But we didn't because it's a very narrow  
8 hearing on the cease and desist order. The legal  
9 construct of the Public Trust will come into play.  
10 That's a legal argument which can be used in your  
11 closing brief.

12 In terms of your witnesses, though, Mr. Riley  
13 does appear to have some expertise and some knowledge  
14 because of his experience under the remediation phase.  
15 So we'll allow him as a witness tomorrow to testify and  
16 be cross-examined on that phase of his testimony.

17 And I think, despite Mr. Rubin's objection and  
18 despite the lateness, we'll allow that in because you  
19 did notice him for Phase 2.

20 MR. WARBURTON: That does include testimony on  
21 diligence.

22 CO-HEARING OFFICER WOLFF: But the hearing --  
23 Mr. Warburton, the hearing noticed that the testimony  
24 on diligence was in Phase 1, so you should have noticed  
25 him for Phase 1 for that portion of things.

1           MR. WARBURTON: I have no idea of where --  
2 given the hostile treatment of public interests in  
3 valuable public resources and extreme deference to  
4 private property interests, I have a very difficult  
5 time knowing when the State Water Resources Control  
6 Board is going to acknowledge its Public Trust  
7 responsibilities.

8           And so I have no idea when -- when I am  
9 supposed to present evidence. Because there's a  
10 history happening here where public interests have not  
11 been adequately represented.

12           CO-HEARING OFFICER BAGGETT: Well, I guess in  
13 this hearing you've got about six parties representing  
14 them.

15           I think Mr. Jackson is no -- he's very  
16 familiar with these statutes. Mr. Silver. I think  
17 you've got a number of people representing those  
18 interests along with yourself. So it's not a separate  
19 phase.

20           MR. WARBURTON: Well, it's very -- I -- I --  
21 I -- I'm sure you recognize Mr. Jackson's absolute  
22 pleasure at being able to easily represent those  
23 interests.

24           I mean, there's been numerous occasions when  
25 his earnest attempts have been thwarted. And I have

1 been going along, saying oh, gosh, better him than me.

2 And you -- if that's --

3 CO-HEARING OFFICER BAGGETT: Okay. That's the  
4 ruling. You'll have your opportunity tomorrow to give  
5 your opening statement. You've got two witnesses.  
6 This is the remediation phase of the proceeding, and  
7 how, if the Board assumes the liability, into what  
8 breadth we assume that liability, the final order, we  
9 need to figure out what remedies to impose, and that's  
10 what this is about right now.

11 So tomorrow you'll get your chance to make  
12 your opening statement and tie it all together.

13 CO-HEARING OFFICER WOLFF: I would like to  
14 make a brief comment.

15 I am deeply disappointed if my behavior in any  
16 way, Mr. Warburton, makes you think that I don't  
17 recognize the affirmative obligation we have under the  
18 Public Trust Doctrine.

19 I don't know how I could make it clearer to  
20 you than to simply say that I recognize that  
21 obligation. I take it very seriously. And any actions  
22 that I have taken during these hearings, the rulings  
23 have to do with managing a very complicated process,  
24 and in no way, shape, or form are they meant to be  
25 prejudicial in one direction or another.

1           I believe I was somewhat harsh on witnesses  
2 and parties in the liability phase in order to move  
3 things along, but I hope I was harsh in an equally fair  
4 way in order to move things along. Mr. Rubin is  
5 laughing now; he thought I was pretty hard on him.

6           So I just want to make it clear if in any way,  
7 shape, or form my behavior has made it appear to you  
8 that I don't respect and understand our affirmative  
9 obligation, I believe that I do. And that, you know,  
10 my actions were motivated by another reason, that of  
11 moving the process along.

12           CO-HEARING OFFICER BAGGETT: I would concur  
13 since we're still on the record discussing this.

14           This is a different proceeding than a normal  
15 water rights proceeding. I don't know if we've ever  
16 done a proceeding quite like this; at least from my  
17 nine and a half years here, we haven't. And I don't  
18 know about prior to that. Buck probably would know.

19           Here you've got a prosecutor and defense, at  
20 least. And we've got a Prosecution Team arguing the  
21 law was violated. We've got a defendant like in a  
22 quasi-criminal case -- since we're quasi-judicial, I  
23 guess we'd be quasi-criminal. And we're doing a unique  
24 thing in these proceedings. Because of our rules, we  
25 allow -- I guess for lack of a better word, the closest

1 analogy would be an Intervenor in a FERC proceeding,  
2 the licensing proceeding or in a larger administrative  
3 hearing.

4           So we're allowing all these other parties to  
5 come in outside -- between these two parties that we  
6 are trying to have a dispute between, we are allowing  
7 all these interested parties to intervene in this.

8           So it's a little different than a normal water  
9 rights proceeding. Isn't really a water rights  
10 proceeding. It's an enforcement hearing that happens  
11 to be a water right case.

12           And I know it's very confusing. I think at  
13 times it confuses all of us too because we've never  
14 sorted through this kind of beast before in this  
15 particular way.

16           I can understand the confusion. But it's not  
17 like the Mono Lake case where it was a pure Public  
18 Trust case where the Board used its Public Trust  
19 authority to bring a water rights holder before it and  
20 in essence readjudicate a water right.

21           So I hope that makes it clear. Public Trust  
22 is a legal construct always in the Water Code and the  
23 statutes and court -- the law of this state, through  
24 black letter as well as through the -- in court cases.

25           So I hope that clarifies a little bit, and

1 maybe we can chat when this is all over and talk about  
2 how to make proceedings like this go a little smoother  
3 and be clearer next time around.

4 But right now we've got a pretty big job  
5 before us and a lot of parties and the hour is late.  
6 So we'll see you tomorrow.

7 Mr. Rubin, do you have anything else?

8 MR. RUBIN: Off the record.

9 CO-HEARING OFFICER BAGGETT: We're off.

10 \* \* \*

11 (Thereupon the hearing recessed at 5:07  
p.m.)

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## 1 CERTIFICATE OF REPORTER

2 I, LINDA KAY RIGEL, a Certified Shorthand  
3 Reporter of the State of California, do hereby certify:

4 That I am a disinterested person herein; that  
5 the foregoing WATER RESOURCES CONTROL BOARD hearing was  
6 reported in shorthand by me, Linda Kay Rigel, a  
7 Certified Shorthand Reporter of the State of  
8 California, and thereafter transcribed into  
9 typewriting.

10 I further certify that I am not of counsel or  
11 attorney for any of the parties to said meeting nor in  
12 any way interested in the outcome of said meeting.

13 IN WITNESS WHEREOF, I have hereunto set my  
14 hand this August 1, 2008.

15

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17

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